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Current Topics.

Solicitors and the Bench.

FROM SOME statistics published in the current number of the *Scots Law Times* it appears that of the sixty-three Scottish sheriffs (who it will be borne in mind correspond to our county court judges, with, however, somewhat more extensive jurisdiction) sixty-two are members of the Faculty of Advocates, that is, are members of the Bar, while the remaining one, Sheriff-Substitute J. M. CAMPBELL, of Campbeltown, was not an advocate but a solicitor before his appointment to the Bench. In this matter of eligibility for the Sheriff Court Bench the Scottish solicitors have an advantage over their English confrères, for by the Sheriff Courts (Scotland) Act, 1907, it is provided that "every person appointed to the office of salaried Sheriff-Substitute shall be an advocate or a law agent within the meaning of the Law Agents (Scotland) Act, 1873." For the nominally higher office of Sheriff-Principal, whose judicial functions are mainly appellate, solicitors are not qualified merely as such, but a solicitor who has acted as a Sheriff-Substitute for five years is made eligible for the appointment. In practice, only members of the Bar are appointed to the office of Sheriff-Principal, but there usually have been one or two belonging to the other branch who have reached the Bench as Sheriff-Substitutes, upon whom the burden of the court work usually rests. Several of those who have, as it were, graduated from the solicitor branch have shown themselves quite as competent on the seat of judgment as their brethren who have come from the Faculty of Advocates. One of the most distinguished Sheriff-Substitutes of a past generation was Mr. HUGH BARCLAY, who for well-nigh fifty years administered justice, both civil and criminal, in the County of Perth, and was moreover a diligent writer and editor on legal topics. More recently another very learned solicitor who reached the Sheriff Court Bench was Mr. T. A. FYFE, whose familiarity with commercial law made him specially qualified for the post of Sheriff-Substitute at Glasgow. Even for the High Court Bench in Scotland, solicitors, or at all events that section of the profession entitled to append the letters "W.S." after their names, are technically eligible for appointment, although, so far as appears, no Writer to the Signet seems to have been fortunate enough to be made a Lord of Session. Is there any reason why English solicitors should not, like their Scots brethren, be made eligible for the County Court Bench?

Continuance of Injury or Damage.

IN A number of cases, culminating with *Morris* v. *Winter* [1930] 1 K.B. 243, it has been settled beyond a doubt that in order to discover whether an action against a public authority is barred by the Public Authorities Protection Act, 1893, the relevant point of time is that at which the act or default complained of took place, and not that at which the resultant damage arose or until which it continued. The words "continuance of injury or damage" are construed to mean continuance of the act from which the damage resulted. Mr. Justice BRANSON recently followed these decisions in *Copper Export Association, Inc.* v. *Mersey Docks and Harbour Board* (*The Times*, 21st June), a case presenting somewhat unusual features. The plaintiffs were the owners of a cargo on board the steamship "Oklahoma," which caught fire in Sandon Dock, Liverpool, on 15th October, 1929. Part of her sank and the remaining part was sunk by the defendants on 21st October, 1929. On 19th November the dock was emptied and the defendants entered into a contract to effect temporary repairs to the ship at a cost of £43,000 odd. On the repairs being completed on 1st February, 1930, it was discovered that the ship was of no further use, and it was sold to shipbreakers for a little over £3,000. The Board's powers under s. 7 of the Mersey Docks and Harbour Board Act, 1912, were to raise, destroy and remove wrecks in their docks, to sell wrecks and cargoes and after paying expenses to pay the residue to the owners. The expenses in this case amounted to over £90,000, and there was therefore no residue. An adjustment statement showing the expenses incurred and the amount available for distribution among the cargo owners was issued on 20th June, 1931, and the writ was issued on 30th July, 1931. The plaintiffs claimed that the defendants were negligent in not seeing at once that the ship was only fit for breaking up. His lordship held that the plaintiffs' claim was barred as the writ was issued more than six months after the act or default on which alone the claim could rest, namely, the allegation that the defendants were negligent in dealing as they did with the "Oklahoma." His lordship distinguished *Wilkinson* v. *Verity*, L.R. 6 C.P. 206, on which the plaintiffs relied, on the ground that that was an action of detinue where the plaintiffs had a complete cause of action arising out of the demand and refusal of their property. The plaintiffs in this case could not therefore rely on the final under-payment without regard to the earlier negligence, and judgment was accordingly entered for the defendants.

Consent to an Operation.

In a previous note, *ante*, p. 237, we discussed the case of a man who, refusing to undergo a minor operation to remove the point of a hypodermic needle which had broken in his chest, died because it pierced his lung. The coroner suggested that the doctor had listened too much to the patient, and not to his own sense of duty. The dangers of the course indicated by the coroner, however, appear clearly enough from the more recent case of *Cull* v. *Chance, The Times*, 18th June, where the plaintiff sued the surgeon who had performed an operation on her, and the authorities of the hospital where the operation had taken place, on the ground that she had not consented to it. She proved her case by a letter she had written to the hospital consenting to a minor operation, but not to that which the surgeon actually performed, as the result of which she, a married woman, was precluded from having more children. This disability would not have followed the operation to which she had given consent. By reason of some negligence or omission in the hospital, which the Lord Chief Justice considered was not satisfactorily explained, the contents of the letter were not communicated to the surgeon, who, deeming he had a free hand, performed the major operation. The law is, of course, in no doubt. One who pierces or cuts or even bruises another's skin without consent commits a trespass to the person—and, indeed, the surgeon's knife may probe deeper than the murderer's, and with the same result if the operation is unsuccessful. The patient's consent, however, protects the surgeon from civil proceedings, and his motive protects him from prosecution. Consent to the injury inflicted is not, of course, necessarily a defence to a charge of assault, as the prize-fight cases clearly show, and an operation can only be justifiable in law as the lesser of two evils. The patient has the free choice to refuse or consent, however foolishly it may be made, save, of course, in the one case where the motive is not future health, but the refusal of maternity. As pointed out in the previous note, the freedom to make a foolish choice against an operation does not extend to that made by a parent or guardian on behalf of an infant child. The cases are cited, pp. 237-8, *ante*, and also in a note a few years ago, 71 Sol. J. 110.

Pamphlets from the Air.

Certain persons during the course of one of the usual five shilling flights over the country adjacent to an aerodrome took the opportunity to drop circulars from the aeroplane in which they ascended. The annoyance of the owners and staff of the aerodrome can hardly have been lessened by the fact that the leaflets contained arguments against the holding of a projected air pageant. A policeman was called and took names and addresses, but the view taken at the local police station was, as reported, that no offence had been committed. Since the report appeared in a newspaper of wide circulation, which committed itself to this view, perhaps correction may be useful. The Air Navigation Act, 1920, which is the aviator's charter, since flight over private land within its conditions is thereby rendered no longer trespass, provides that Orders in Council may be made to regulate the conditions under which aircraft may be used for carrying goods, mails and passengers, and for the imposition of penalties to secure compliance with such Orders (s. 3 (*e*) and (*m*)). General rules were made in 1923 under this power, and, by r. 13, no one was allowed to drop, or cause or permit to be dropped, any article from an aircraft except ballast in accordance with the Order, or articles as directed by the Secretary of State, the Minister for Air. This rule has been amended from time to time to permit of spraying crops or of dropping articles with the written permission instead of by the direction of the Minister, etc., but the general prohibition remains, and is obviously just and reasonable, otherwise everybody who owns a garden might find it snowed under by competing advertisements from the air. The maximum penalty for contravention of the Order is prescribed by r. 27 (3), and is severe, namely, six months' imprisonment or a fine of £200, or both imprisonment and fine. The owner or pilot has a defence by r. 27 (1), proviso (*b*), to prosecution under r. 13, that the articles dropped in contravention of the Order were so dropped without his actual fault or privity. Whether a charge will be made in respect of the above incident, and, if so, whether the facts alleged will be proved, remains to be seen, but the police stationed near an aerodrome should have some knowledge of the orders under the Air Navigation Act, 1920, which they may possibly have to enforce.

"Bottle Parties."

The police are reported to be considering a new puzzle, apparently invented by certain persons well aware of the enormous profits accruing from so-called "night clubs," in which, against the law of course, liquor is consumed at any hour during which they are open. Such a person now proposes to hire suitable premises, and to inform all his friends and acquaintances of his purpose, with, no doubt, the request that his friends will tell their friends, and so forth. To all such there is a general invitation, but they are given to understand that, although they can procure liquor beforehand and consume it on the premises, it will not be sold to them there. Thus they may bring their own bottles themselves, or, ordering and paying for them in a lawful way, require them to be sent to such premises, or may request the host to do so on their behalf. The argument is, no doubt, that A may lawfully entertain his friends, B and C, etc., at his private premises at any time of the day or night, and if they choose to bring with them, or even to order, in readiness for the purpose, liquor which they have lawfully bought, no offence is committed by anybody. At one time, and possibly even to this day, certain young folk whose hospitality exceeded their resources genuinely arranged to give parties to their friends, on the footing that those who found conviviality without liquor irksome should bring their own supply, which the host or hostess was unable to afford. Since intoxicating liquor may lawfully be drunk round the clock on premises other than licensed premises, and it is immaterial whether the owner or occupier of a place buys his own drinks, or has them bought for him by a generous friend, or his guests bring and consume their own, the argument is complete. The law officers are reported to have given an opinion that an establishment founded for the express purpose of being run on these lines can be controlled or suppressed by the ordinary processes. Possibly such an establishment might be held to be a "club," but even so, it might not be one in which intoxicating liquor was "supplied" to members or their guests within s. 91 of the Licensing Act, 1910, for they would supply themselves. Such a place, however, would not pay unless profit was made on the liquor consumed, and possibly a court could find that the proprietor, in charging guests with some fancy fee for buying the wine on their behalf, was really retailing it to them. Any profit made in any way by the proprietor out of his guests would be inconsistent with the plea of private hospitality. If this kind of thing cannot be checked, the law should be amended to discriminate between night clubs and private hospitality, as it now discriminates between legal and illegal gambling on private premises.

Rye Council Awry.

As a protest against a cut of £800 in expenditure on roads by the Sussex County Council, the members of the Rye Rural District Council are reported, at a recent meeting, to have resigned in a body. After this superb gesture, they were about to proceed to the next business when someone, perhaps rather tactlessly, observed that, being officially dead as the result of their hara-kiri, they could not have it both ways, and must continue defunct. The Council, however, appears to have been minded to combine the glamour and heroism of

suicide with the comfort of living. The Chairman said they had better carry on the business, and somebody else observed that the suicide should be reversed, a motion to rescind the resignation being suggested for the next meeting. The position is perhaps of more than local interest. The general rule is that, if a resignation has actually taken effect, it cannot be withdrawn. In *R.* v. *The Mayor and Town Council of Wigan* (1885), 14 Q.B.D. 908, this was applied to a borough councillor who, in resigning office, had properly observed all the requirements of the Municipal Corporations Act, 1882, s. 36. It was similarly applied to a member of a voluntary trade protection society in *Finch* v. *Oake* [1896] 1 Ch. 409, and to the office of managing director of a limited company under its articles in *Glossop* v. *Glossop* [1907] 2 Ch. 870. In the two latter cases the persons resigning could do so at their own pleasure, and it was held that the mere communication of their determination to resign to the bodies concerned sufficed to make the act effective. By s. 48 (4) of the Local Government Act, 1894, the resignation of district councillors of county districts which are not boroughs are regulated by the Municipal Corporations Act, 1882, but by proviso (*a*) rural district councillors are excepted, and were placed in the same position for the purpose as guardians. The office of guardian no longer exists, but at the date of the 1894 Act a guardian could resign if the President of the Local Government Board (afterwards the Minister of Health) approved his reason, and this was continued by the Poor Law Act, 1927, s. 15. In the opinion of the editors of "Lumley's Public Health," 10th ed., the provision still applies to rural district councillors (see p. 1015). Assuming therefore that the Rye councillors have not communicated their resignations to the Minister, they are not effective, and presumably can be withdrawn, or even will be void if nothing further is done on them. What effect the whole performance will have on the Sussex County Council remains, of course, to be seen.

Licence for Armorial Bearings.

PROSECUTIONS UNDER s. 27 of the Revenue Act, 1869, for "wearing or using any armorial bearings . . . without having a proper licence under the Act" are not very common nowadays, the "boast of heraldry" not being so much coveted as it was at one time. Such a prosecution was however dealt with on 14th June, at the Petty Sessional Court of Faringdon, Berks, when FRANK LANE, an ironmonger, was summoned under that section for using armorial bearings on his notepaper without taking out a proper licence. The case was dismissed on payment of one guinea costs, the defendant giving an undertaking not to use armorial bearings in the future without paying tax. It appeared that the defendant had a genuine historical title to the armorial bearings. CHARLES II, on his return to the throne, in grateful recognition of the services of Mistress JANE LANE in allowing him to company her as her servant on his previous flight to the Continent, had granted the LANES two additions to the family coat of arms, the arms of England on a canton, and later a strawberry roan horse holding at its feet the royal crown. The defendant claimed to be exempt from tax, but it was pointed out on behalf of the prosecution that only members of the Royal Family and certain officials were exempt (s. 19, sub-s. (1)). It appeared that members of the family had used the crest for some years without paying the tax, in the belief, which they shared with experts on heraldry, that they were exempt. The enactments with regard to the taking out of licences have always been construed with the greatest of strictness, and even when such crests have been used by inadvertence, an offence has been held to have been committed. In one case a defendant pleaded that an envelope bearing a crest which he had used must have been a casual purchase, and he was held to be liable to the tax (Assessment Tax Case No. 2803 (1868), 32 J.P. 807), while in another an auctioneer who used articles of old plate containing another family's armorial bearings was held liable (*Re Phillips* (1862), 11 L.T. 189). The duty for armorial bearings is only two guineas annually if "painted marked or affixed on to any carriage" and one guinea annually if not so painted marked or affixed, but otherwise worn or used (s. 18) and the penalty under s. 27 is £20. Clearly, therefore, if family pride is not to be denied and set aside, as in GILBERT'S song, the tax must be paid.

A Means Test for Council Houses ?

IT IS well known that many local authorities quite naturally endeavour to let the houses they have provided to the best tenants they can find, that is to say, in very many cases, the tenants are drawn from the higher working classes, men and women in receipt of good wages, with comparatively small families and who are most likely to keep the house in a decent condition. It is clearly desirable, both that local authorities should not be forced to let houses to tenants who care not at all whether the houses quickly go to rack and ruin, and that the better of the slum dwellers should be encouraged. On the other hand, to select the tenants according to the smallness of their families and their ability to pay merely stultifies all the efforts of the State to solve the housing problem, inasmuch as it does nothing to reduce overcrowding or to re-house the poorest of the poor, whose manner of existence is the most distressing of all. Moreover, though these tenants in receipt of good wages may be excellent from a landlord's point of view, they could well afford to live in houses provided by private enterprise, and often could purchase their own houses by instalments and with the help of building societies. The loss of these purchasers is a severe handicap for private builders whose legitimate customers many of these well-paid workers must be considered to be.

A Re-Insurance Contract.

WHEN IS an agency agreement between insurance companies a contract of insurance requiring to be embodied in a stamped marine policy in order to be valid ? In *Motor Union Insurance Co. Ltd.* v. *Mannheimer Versicherungsgesellschaft* (*The Times*, 11th June), the respondents, a German company, agreed with the Motor Union Insurance Company Limited, that the Motor Union should issue policies on behalf of the German company, but that the policies should be issued in the name of the Motor Union, and the business should be ostensibly Motor Union business alone, the Motor Union to be liable for half the total sum insured when issuing a policy. Heavy losses resulted from the policies issued in accordance with the agreement, and the Motor Union sought to recover £40,000 from the German company. The matter went to arbitration, and the arbitrator awarded in favour of the Motor Union, subject to the opinion of the court on a special case. Mr. Justice GODDARD delivered a considered judgment in favour of the German company, on consideration of ss. 22 and 23 of the Marine Insurance Act, 1906, and s. 93 of the Stamp Act, 1891. Section 22 of the Marine Insurance Act, 1906, provides that a contract of marine insurance is inadmissible in evidence unless embodied in a marine policy in accordance with the Act. By s. 23 the policy must specify, *inter alia*, the name or names of the underwriters. His lordship followed *English Insurance Co. Ltd.* v. *National Benefit Assurance Co. Ltd.* [1929] A.C. 114, in which a participation agreement between insurance companies was regarded as a re-insurance agreement requiring to be issued in the form of a stamped policy in accordance with the statutes. Lord ATKIN in that case, at p. 126, said with regard to persons engaged in the business of re-insurance: "At present they are outlaws moving outside the pale, and it is difficult to see why that should be the position." As nothing has been done by the Legislature to alter the position, it appears that persons conducting this kind of business will still be "outlaws moving outside the pale" unless they do so in the form of stamped policies.

Criminal Law and Practice.

NOT DISCLOSING DEFENCE.

THE recent case of *R.* v. *Naylor* (1932), 23 Cr. App. R. 177, is of great interest to solicitors conducting defences at the police court, where there is a committal for trial. The decision very materially affects the attitude hitherto taken by the judges on the reservation of defence; it is not too much to say, indeed, that, substantially, it amounts to a reversal of the view hitherto acted upon, though, doubtless, attempts will be made in the future to reconcile the later decision with the earlier ones, as to which the Court of Criminal Appeal, in giving judgment, was discreetly silent.

It is convenient to take a few of the cases, finishing with *R.* v. *Naylor, supra*, when it will be seen what a very considerable change is made by the latter.

In *R.* v. *Humphries* (1903), 67 J.P. 396, the prisoner was charged with manslaughter. At the police court, acting upon his solicitor's advice, he reserved his defence. At the trial, the judge asked him why he had done so, and the solicitor himself went into the box, and acknowledged that the reservation of defence was his doing.

The judge said, "If the defence is an honest one it should be given at the earliest possible stage, *and justices should impress that upon all prisoners.*" He added the comment that "otherwise the value of the defence is much lessened."

With great respect to the learned judge, the justices' duty in the matter is laid down by statute, wherein (now Criminal Justice Act, 1925, s. 1 (2)) they are directed to tell the accused, "You are not obliged to say anything unless you desire to do so." It cannot be proper to seek to increase the desire if present or to create it if absent, by impressing on the accused that, although not obliged to say anything, it will be very much better for him to say all he can.

Something of the same line was taken in *R.* v. *Nicholson* (1909), 73 J.P. 347, by CHANNELL, J. The accused there had two witnesses for his defence present at the police court, where they were not heard. The learned judge said, "It is a great pity when justices discourage witnesses from giving evidence before them on the initial stage of criminal proceedings." He then went on to add a much more debatable remark. "They should be encouraged then to give evidence." What form the encouragement could take, consistent with the statutory caution, was not disclosed.

The defence of alibi, so far as anything the justices can properly do, is on the same footing as any other defence. There is an inescapable dilemma. The alibi, if unrevealed till the last moment, is almost certain to be discounted. If revealed early in the defence it is, if false, usually doomed to destruction. But it is obviously an immense advantage to go to the trial with an alibi disclosed but not shaken by investigation. It is little short of forensic madness not to disclose an alibi shown to the defending solicitor to be true. Nothing can be gained by withholding this defence, and all may be lost.

Failure to disclose an alibi, at the police court, was the subject of judicial comment by the Court of Criminal Appeal in *R.* v. *Winkworth* (1908), 1 Cr. App. R. 129; in *R.* v. *Moran* (1909), 3 Cr. App. R. 25; and no doubt in other cases; and presumably judicial comment as to failure to disclose this defence will still be regarded as in order.

But *R.* v. *Naylor, supra*, by implication, condemns the judges' observations in the cases of *R.* v. *Humphries, supra*, and *R.* v. *Nicholson, supra*.

When cautioned at the police court in the statutory form NAYLOR said, "I don't wish to say anything except that I am innocent." The learned Recorder at the Grimsby Sessions said, "Now you would imagine a purely innocent young man accused of housebreaking and having these words put to him: 'Do you wish to say anything?' Surely if he is an innocent man one would think he would give some explanation of where he was, and what he was doing at the particular time, and would make his defence then and there. But he says nothing. I can understand the answer to that made by counsel, and I have heard the same answer on many occasions. It is all blamed on the solicitor . . . Of course, what lurks in the background of this sort of hanging back and not disclosing his defence is this, that he gives the prosecution and the police no time to inquire into any statement he may make so that it might be possible to show that these statements are not true. That is the real reason why many men don't make statements when they are first called on to do so, when they don't wish to do so."

This was not only commenting on failure to make a statement, but imputing the very worst motives for the failure. The Court of Criminal Appeal would not have it. Not only did the Court reiterate that, "it is not corroboration of incriminating evidence that the accused did not deny the charge or was silent about it" (a general statement that goes too far and, unqualified as it stands, contradicts much existing law, see *R.* v. *Feigenbaum* (1919), 14 Cr. App. R. 1; *R.* v. *Tate* [1908] 2 K.B. 680), but went on, "When one looks at the words of the formula which must be deliberately framed, it is quite obvious that they were intended to convey and do convey to the prisoner the belief that he is not obliged to say anything unless he desires to do so. Now if these words are really to be construed in this sense that, having heard them, an accused person remains silent at his peril, and may find it a strong point against him at his trial that he did not say anything after being told he was not obliged to say anything, one can only think that this form of words is most unfortunate and misleading. We think that *these words mean what they say*, and that an accused person is quite entitled to say: 'I do not wish to say anything except that I am innocent.'"

Any other conclusion would have been incompatible with the presumption of innocence, which throws the onus on the prosecution of proving guilt unaided by the accused himself. The decision immensely strengthens the hands of solicitors who consider it discreet on occasion to reserve a defence. It remains unwise to make such reservations a regular practice, but it is well to be able to let the defence go to a trial unprejudiced by action in the preliminary stages which often has to be hasty and may be exceedingly ill-advised. The chance of subsequent adverse comment practically disappears, or if it is made it will give good ground for an appeal.

Poor Persons Procedure.

"WHILE lawyers have more sober sense, Than to argue at their own expense," remarks SAMUEL BUTLER in *Hudibras*. It may be that the author's legal experience as a clerk to a justice of the peace had not familiarised him with the working of the Statute 11 Hen. VII. c. 12, or that the statute in question, though not repealed till 1883, was a dead letter in the troublous times when the poem was written. The statute is cited in an interesting article in "The Bell Yard" for May, 1932, in which Mr. COOK, the Secretary to The Law Society, reviews the whole of the legislation, past and present, on the subject, concluding with an appeal to members of the profession to recognise the obligation called into being by the monopoly they enjoy.

It is a far cry from SAMUEL BUTLER to the Trades Union Council, but a quotation from the complaint of a delegation recently sent by that body to interview the Lord Chancellor on the subject of the cost of litigation may be in point. In the delegates' view: "It will be realised that it is quite impossible for the poor person to get within reach of justice. The poor persons procedure is much praised by lawyers and judges. It hardly touches the fringe of the problem and is little more than a protective covering for the legal profession or an opportunity for the less experienced and less busy

members of the profession to practise on the poor." (*The Times*, 8th June, 1932.)

In a journal of this kind, it is hardly necessary to refute at length the alternative allegations with which the quotation concludes. Both are irrelevant and untrue as well as unkind. A perusal of Mr. COOK'S article or a search among Law Reports would have satisfied the delegation that many eminent and busy practitioners have expended much time and hard work in the unremunerated service of poor litigants, more than one case having been taken to the House of Lords.

Mr. COOK'S article relates how the procedure under the 1495 Act was confined to common law cases and to plaintiffs, and was based upon conscription, and traces the various reforms which have since been effected, so that now, if the law does not represent the perfection of human reason, the poor persons procedure at least approximates to that ideal. It may be said that the machinery which has been devised represents organised charity in the best sense of the expression. Applicants start, it is true, by filling in the inevitable form; but the very form, while admirably drawn from the technical point of view, seems to reflect sympathy and understanding. The same qualities characterise the work done by the Poor Persons Committees, which perform the delicate task of inquiring into the applicant's means and his grievances. And these Committees have, of course, a dual responsibility, which they discharge without reward. Mr. Justice ROCHE has recently suggested that applicants should be told that the charity they receive is given not by the State, but by the profession. In certain cases it would indeed be a good thing if this fact were brought home to the individual concerned. But it would hardly be becoming on the part of those who administer the system, still less on the part of solicitors and barristers who conduct cases for nothing, to make a point of informing those whom they assist of the exact source of the charity. Many of these cases are arduous and lengthy—one of them has been known to last weeks, the solicitor and two counsel concerned having to refuse remunerative work during that period—but if the client was not aware to whom he was to be beholden, it would not be for *them* to enlighten him.

This brings another matter to the fore. Undoubtedly vast numbers of those for whom the poor persons procedure is intended know nothing of its existence, let alone its working. This may sound surprising, but when one considers, for instance, the notoriety achieved by the Rent Restrictions Acts, and the number of popular journals which gave and give free legal advice on questions relating thereto, and when one then reads the Report of the Departmental Committee which considered the working of those Acts and learns how poor tenants, and especially sub-tenants, have been exploited purely through ignorance, it is clear that publicity is the only remedy. This again is something which the profession cannot fittingly undertake; but perhaps the T.U.C. will study a 3d. copy of the official publication on the subject (obtainable from H.M. Stationery Office) and then proceed to spread knowledge instead of indulging in misinformed criticism.

If there is any truth in the allegation that the procedure touches only the fringe of the problem, the defect cannot be fairly ascribed to the machinery itself, but rather to its scope. It must be admitted that poor persons rarely give or receive credit to the extent of more than £100, and that many actions in which they are concerned are brought in county courts. Assistance may be obtained in the shape of advice from Poor Men's Lawyers; kindly officials are often helpful in drafting pleadings; and county court judges are wont to treat litigants in person with sympathy. And yet ignorance and diffidence, which might be dispelled if the procedure applied to the inferior courts, do sometimes occasion something like a failure or a denial of justice. Whether the system of charity can be extended to meet the needs of litigants in these courts is a problem which presents many difficulties, but this should not deter The Law Society and the Bar Council from considering any solution which may be offered.

Insurance.

SOME RECENT CASES.

DURING the past twelve months there has been no appreciable decrease in the number of cases decided on this branch of the law. But, apart from marine and industrial insurance cases, which call for rather more detailed attention than is within the scope of these notes, there are only a few worthy of attention.

Before the 10th July, 1930, the bankruptcy of a person, or the liquidation of a company, insured against third party risks might deprive a judgment creditor of his rights to the money recovered by the assured from the insurer. *In re Harrington Motor Co.: Ex parte Chaplin* [1928] Ch. 105, illustrates this unsatisfactory position. There, the applicant recovered judgment for damages and costs in an action against a limited company for personal injuries caused to him by the negligence of one of its servants. Before execution could be levied the company went into liquidation, and the insurance company with which the company was insured paid the amount of the damages and costs to the liquidator. The Court of Appeal held that the applicant had no right at law or in equity either as against the insurance company or as against the liquidator to require that the money so paid should be handed over to him.

This hardship was removed by the Third Parties (Rights against Insurers) Act, 1930. Section 1 (1) of this Act provides: "Where under any contract of insurance a person . . . is insured against liabilities to third parties which he may incur, then (*a*) in the event of the insured becoming bankrupt or making a composition or arrangement with his creditors; or (*b*) in the case of the insured being a company, in the event of a winding-up order being made, or a resolution for a voluntary winding-up being passed, with respect to the company . . . if, before or after that event, any such liability as aforesaid is incurred by the insured, his rights against the insurer under the contract in respect of the liability shall, notwithstanding anything in any Act or rule of law to the contrary, be transferred to and vest in the third party to whom the liability was so incurred."

This section was construed in *Ward* v. *British Oak Insurance Co. Ltd.* [1932] 1 K.B. 392, where it was held that the Act was not retrospective so as to affect a case in which liability had been incurred before the 10th July, 1930—the date on which the Act came into operation. It is clear from the judgments delivered in the Court of Appeal that (1) an Act is, *primâ facie*, not retrospective, and (2) that the wording of this particular section is not strong enough to escape this rule.

The application of the *ejusdem generis* rule to a condition in a policy of insurance was considered in *King* v. *Travellers' Insurance Association Ltd.* (1932), 48 T.L.R. 53. A policy of insurance against accidental loss of baggage contained a condition which read: "Jewelry, watches, field-glasses, cameras, and other fragile or specially valuable articles must be separately declared and valued." The plaintiff lost a valuable fur coat, and the defendants contended that it fell within this condition, and that, as it had not been separately declared and valued, it was excluded from the insurance.

ROWLATT, J., in his judgment, said: "The question . . . is not whether this particular fur coat can be said to be specially valuable . . . but whether furs or fur coats are specially valuable within the meaning of condition 5. . . . Are furs specially valuable articles in the sense exemplified by the particular instances named? I do not think that they are. . . . The fact that the purchase of some furs affords scope for extravagance and vanity, so that a woman can purchase furs at fantastic prices, does not, to my mind, show that furs as a class, being a commonplace article of dress, are fragile or specially valuable articles in the same sort of way as jewellery, watches, field-glasses, and cameras are fragile or specially valuable articles."

Farra v. *Hetherington* (1931), 47 T.L.R. 465, was a decision on the materiality of undisclosed information. Lord HEWART, C.J., in his judgment, adopted the concise statement of Lord DUNEDIN in *Glicksman* v. *Lancashire and General Assurance Co. Ltd.* [1927] A.C. 139. Lord DUNEDIN said: "A contract of insurance is denominated a contract *uberrimæ fidei*. It is possible for persons to stipulate that answers to certain questions shall be the basis of the insurance, and if that is done then there is no question as to materiality left, because the persons have contracted that there should be materiality in those questions; but quite apart from that, and alongside of it, there is the duty of no concealment of any consideration which would affect the mind of the ordinary prudent man in accepting the risk."

In *Holmes* v. *Scottish Legal Life Assurance Society* (1932), 48 T.L.R. 306, the claimant effected a policy on the life of his father. The proposal form was made the basis of the contract, and provided that the policy should be void if any statement in the proposal form was untrue. The policy provided that it should be avoided by any "fraudulent or untrue" statement, and that it should be subject to the rules of the society. Rule 26 provided that a policy should be avoided by a "fraudulent" statement as to the health of a person whose life was insured. The claimant innocently stated that his father's health was sound, whereas his father had heart disease. SWIFT, J., held that the proviso in the policy as to avoidance clearly included innocent as well as fraudulent mis-statements, and was not limited by, or inconsistent with, r. 26.

Probably the most interesting of the recent decisions is *Morgan* v. *Provincial Insurance Co. Ltd.* (1932), 48 T.L.R. 217, where the question was whether an answer given in the proposal form was to be construed as a warranty or a description of the risk. The importance of the distinction is this: If such answer is held to be a warranty, its inaccuracy will avoid the policy at the option of the insurer. But if it is construed as a description of the risk, the policy will be effective save only as to risks falling outside that description.

In *Morgan's Case* the claimants stated, on the proposal form for an accident insurance policy on a motor lorry, that the goods to be carried were coal, and that the lorry would be used for delivery of coal. The policy provided that it was a condition precedent to the insurers' liability that the statements in the proposal form were correct. On a date during the currency of the policy, the lorry having been used until noon for delivering coal, the claimants hauled three loads of timber in the lorry, which, during the haulage of the last two loads, had in it 5 cwt. of coal for delivery after completion of the haulage of the timber. During the subsequent delivery of the coal a collision occurred, and the insurers denied liability on the ground that it was a condition precedent that the lorry should be used solely for the delivery of coal. The Court of Appeal, following *Farr* v. *Motor Traders Mutual Insurance Society Ltd.* [1920] 3 K.B. 669, and *Roberts* v. *Anglo-Saxon Insurance Association Ltd.*, 43 T.L.R. 359, held that the answer was a description of the risk and not a warranty.

This decision appears to be in conflict with the majority decision of the House of Lords in *Dawsons Ltd.* v. *Bonnin* [1922] A.C. 413; the effect of that decision being that a recital in a policy that "*the proposal shall be the basis of the contract and incorporated therein*" makes the truth of the statements contained in the proposal form a condition of the insurer's liability. The decision of the Court of Appeal in *Morgan's Case* proceeded on the footing that the House of Lords in *Dawsons' Case* did not expressly over-rule *Farr's Case*, which was referred to in argument.

In *Dawsons' Case*, the policy recited that the proposal should be the basis of the contract, and be held as incorporated in the policy. The proposal stated that the lorry, the subject-matter of the policy, would usually be garaged at the insurers' premises. This was not true, for the lorry was usually garaged elsewhere. Lord HALDANE, at p. 421, said: "... if the respondents can show that they contracted to get an accurate answer to this question (as to the garaging of the lorry), and to make the validity of the policy conditional on that answer being accurate, whether the answer was of material importance or not, the fulfilment of this contract is a condition of the appellants being able to recover."

It is, of course, a matter of construction whether a proviso in a policy makes the accuracy of an answer in the proposal form a condition precedent to the insurer's liability. It is difficult to see any distinction between the proviso in *Dawsons' Case* and the proviso "It is a condition precedent to any liability ... that the statements made and the answers given in the proposal form are true, correct and complete" in the policy in *Morgan's Case*.

In *Rogerson* v. *Scottish Automobile and General Insurance Co. Ltd.* (1931), 48 T.L.R. 17. the plaintiff effected a policy of accident insurance on a car described in the schedule to the policy. The policy was expressed to cover the use of any car (other than a hired car) "provided that such car is at the time of the accident being used *instead of* the insured car." The plaintiff exchanged the insured car for a new car of a similar type, and, while using the new car, had an accident. The defendants repudiated liability on the ground that the plaintiff was not using the new car "*instead of*" the old one and that when the insured car was sold the insurance ceased. The House of Lords held that the policy necessarily implied that the insured car should be the subject-matter of the insurance at the time of the accident, and that the plaintiff failed in his action.

Lord MACMILLAN, at p. 18, stated his opinion succinctly in these words: "The assured cannot within the meaning of the policy use another car *instead of* the insured car after he has parted with the property in the insured car. If he has parted with the property in the insured car and buys another car, he cannot be said to be using his new purchase *instead of* the car which he has sold; he is, in my opinion, using it in succession to the insured car, not *instead of* it."

Another interesting case is *Weddell* v. *Road Transport and General Insurance Co. Ltd.* (75 SOL. J. 852). There were in existence two policies covering the same risk, each containing a clause excluding liability in the event of the damage being covered elsewhere. ROWLATT, J., held that the policies were not mutually destructive. He said that it was unreasonable to suppose that it was intended that clauses such as these should cancel each other with the result that, on the ground in each case that the loss was covered elsewhere, it was covered nowhere. On the contrary, the reasonable construction was to exclude from the category of co-existing cover any cover which was expressed to be itself cancelled by such co-existence, and to hold in such cases that both companies were liable, subject of course in both or either case to any rateable proportion clause which there might be.

Of the foregoing cases, *Morgan* v. *Provincial Insurance Co. Ltd.* is likely to prove troublesome to the practitioner, for it may well be doubted whether the decision is correct, in view of *Dawsons' Ltd.* v. *Bonnin*. But, until this is authoritatively decided, and this is only possible in the House of Lords, *Morgan's Case* must be treated as binding.

FIRST TRIAL UNDER NEW PROCEDURE.

Mr. Justice Swift heard the first action under the New Procedure on Wednesday last. The action was begun on a specially indorsed writ and was transferred to the New Procedure List by the Master under Order XIV. The defendant did not appear. His lordship, accepting the plaintiff's affidavit under Order XIV, gave judgment for him with costs.

Mr. Justice Swift said:—"The first New Procedure action has now been tried. The writ was issued under the ordinary procedure on 20th May, and the action has proceeded through all its stages by 22nd June."

The Abolition of the Legislative Council of New South Wales.

THE recent decision of the Privy Council in *Attorney-General for New South Wales* v. *Trethowan and others* (*The Times*, 1st June), has been received with acclamation in Sydney. There the decision is regarded as safeguarding the constitution of the State and as giving a direct blow to the methods and schemes of the late Premier, Mr. LANG. Apart from the momentary popularity of this result of somewhat prolonged litigation, due to the particular circumstances of the present time, the decision is of very great constitutional interest to the Empire as a whole. It is the leading authority on the powers of local legislatures so to alter their constitutions as to turn them from a flexible to a rigid type. As a general rule the Imperial Parliament, in giving self government to the Possessions of the Crown overseas, has taken care so to provide that the new constitution resembled that of Great Britain herself and was of an uncontrolled character, conferring full power on the local legislative body to alter the power thereby conferred. The various statutes setting up these local parliaments for the most part made this clear; but doubts on the matter, so far as they existed, were set at rest by the Colonial Laws Validity Act, 1865. This Act, often described as the charter of colonial independence, conferred most extensive powers. Lord BIRKENHEAD, in his oft quoted judgment in *McCawley* v. *The King* ([1920] A.C. 691, at p. 706) stated: "It was not the policy of the Imperial Legislature, at any relevant period, to shackle or control in the manner suggested the legislative powers of the nascent Australian Legislatures. Consistently with the genius of the English people, what was given was given completely, and unequivocally, in the belief fully justified in the event, that these young communities would successfully work out their constitutional salvation."

The powers thus conferred on local legislatures have long been recognised as being of an extensive character. Such legislatures are of necessity of a subordinate kind, but subject to the limitations inherent in this character, they are not mere delegates of the Imperial Parliament which created them (*Powell* v. *The Apollo Candle Co. Ltd.*, 10 A.C. 282), but are independent sovereign bodies restricted in the area of their powers, but within that area unrestricted. In these circumstances the question arises whether they can curtail their own powers and turn a flexible constitution into a rigid one. BERRIEDALE KEITH, in one of his works on the constitution of the Empire, gave it as his opinion that local colonial legislatures were potentially rigid. The recent decision of the Privy Council in the *New South Wales Case* bears out this opinion and should be of assistance to constitutional lawyers interested in the possibilities of the development of local government in the Empire. The decision definitely opens the door for changes of a very far-reaching character. It is now clear that local legislatures can shackle the complete independence of their successors.

The facts in *Attorney-General for New South Wales* v. *Trethowan* were as follows: Under a local Bill, amended and finally given validity by an imperial Act of 1855, and generally known as the Constitution Act, New South Wales was granted a parliamentary constitution. Under this Act, Parliament consisted of two chambers: a legislative council—a nominated body; and a legislative assembly—an elected body. The Legislature of New South Wales, by s. 4 of the Imperial Act, was given power to make laws altering or repealing the reserved Bill, which set out the constitution, in the same manner as any other laws for the good government of the Colony, subject to the conditions imposed by the said reserved Bill on the alterations of the provisions in certain particulars until and unless the said conditions should be repealed or altered by the authority of the Legislature. The Bill authorised the new Legislature to make laws for the peace, welfare and good government of New South Wales in all cases whatsoever and expressly authorised it, subject to certain conditions, as to majorities which were subsequently repealed, to alter the constitution of the second chamber. Subsequently the Colonial Laws Validity Act, 1865, was passed, which applied to New South Wales. Section 5 provided that: ". . . . every representative legislature shall, in respect of the colony under its jurisdiction, have, and be deemed at all times to have had, full powers to make laws respecting the Constitution, powers and procedure of such legislature; provided that such laws shall have been passed in *such manner and form* as may from time to time be required by any Act of Parliament, letters patent, Order in Council, or Colonial law for the time being in force in the said Colony." In 1902 New South Wales altered its constitution in exercise of its powers, but its Legislature continued to consist of two bodies, the Council and Assembly. The Council, however, became increasingly weak and ineffective and the Labour Party desired to abolish it. This was not a policy which commended itself to the other great political party, and in 1929, when the Labour Party was out of power, the Constitution (Legislative Council) Amendment Act, 1929, was passed, and added s. 7A to the Act of 1902. Section 7A provided that the Legislative Council should not be abolished or its constitution or powers be altered except in the manner provided by the section; namely, that a Bill for this purpose must, before presentation for the Royal Assent, receive the approval of the electors; and sub-s. (6) further provided that the provisions of s. 7A itself should not be repealed or amended except with similar approval.

This was the position when Mr. LANG returned to power at the head of a Labour government. In 1930 a Bill to repeal s. 7A was passed by both Houses of the Legislature, and a further Bill was similarly passed to abolish the Legislative Council. Neither Bill was approved by the electors. Mr. LANG proposed to submit the two Bills to the Governor for His Majesty's Assent without first submitting them to a referendum in accordance with the requirements of s. 7A. Certain members of the Legislative Council applied for an injunction to restrain the Bills being so presented for assent before a referendum had been taken, and for a declaration that they could not be so presented. The appellants contended that (1) the powers of succeeding Legislatures could not be fettered in the manner laid down by s. 7A; (2) that the section was void as being repugnant to the Constitution Act; and (3) it was void as being repugnant to s. 5 of the Colonial Laws Validity Act, 1865. The appellants' contention was rejected by the Supreme Court of New South Wales, their appeal from this decision was dismissed by the High Court of Australia and it was in these circumstances that they appealed to the Privy Council.

Their lordships held that s. 5 of the Colonial Laws Validity Act, 1865, was the master section. This section read as a whole gave the Legislature of New South Wales power to alter the laws provided such alterations were passed in the *manner and form* from time to time required by any Act still on the statute book. Their lordships held the words *manner and form* were amply wide enough to cover an enactment providing that a Bill was to be submitted to the electors, and that unless and until a majority of the electors approved the Bill, it should not be presented to the Governor for His Majesty's Assent. They therefore held that s. 7A was *intra vires* the constitutional powers of the Legislature of New South Wales, and valid, and recommended that the appeal should accordingly be dismissed.

This decision largely turned on the meaning of *manner and form*. The appellants contended strenuously that a measure which took power from the Legislative and gave it to another body, as did the referendum provision, could not be *manner and form* only. It was something more. *Manner and form* must be limited to the procedure of the Legislature itself. It was not possible to stretch the words to cover the transfer

of power from the sovereign body to another body. This contention was rejected, and it is now established that s. 5 of the Colonial Laws Validity Act, 1865, authorises a legal legislature to adopt a rigid constitution, and to fetter the powers of its successors. What has been done once can be done again. If the contention of the respondents were pushed to its logical extent, it would mean that an Act could be passed providing that no alteration should be made in the constitution without the consent of 95 per cent. of the electorate or of some body of a partisan nature, say the local trades union congress, which provision would in effect give control of the legislative machine to one faction of the people. It must be assumed, however, that those who are elected to govern will do so fairly. Any constitution in the hands of imbeciles must collapse. It is obvious that such considerations as these cannot affect the legal position, and the decision of the Privy Council in this matter may work in the end for the best. But it is easy to foresee that in this particular State, whose parties have long shown a desire when in power to entrench themselves in perpetuity, the decision, though hailed to-day as the anchor of constitutional liberty, may be used to-morrow for another purpose. Be that as it may, restrictions which, if imposed by the Imperial Parliament would have been regarded as an outrage on the freedom of local legislative development, can now be created by such local legislature itself. The drawbacks of a rigid constitution are well known; and it is distinctly doubtful whether such a constitution is desirable for young communities, as yet inexperienced in government. Flexibility has advantages in a rapidly developing and changing state. So long as the decision in *The Attorney-General for New South Wales* v. *Trethowan* is used to secure the legislature from dominance by one party and to make it truly representative of the will of the whole State, all will be well; it will only be unfortunate should it be employed to anchor in power the representatives of one section of the community.

The Auctioneer's Memorandum.

MANY decisions have been given by the courts relating to the memorandum of the auctioneer. A memorandum in writing is, of course, necessary to effect conformity with s. 4 of the Sale of Goods Act, 1893, which relates to the sale of goods to the value of £10 or upwards. It is also necessary to the enforcement of a contract for the sale of land, or any interest in land, by virtue of the Law of Property Act, 1925, s. 40, which replaced s. 4 of the Statute of Frauds. The memorandum with which we are concerned in this article is that made by the auctioneer of the sale of goods put up for public auction. By the fall of his hammer the auctioneer, as agent for the vendor, signifies his acceptance of the offer made by the last bidder. All that then remains to complete a legal contract of sale is that the auctioneer shall make a memorandum, and it is in fact his duty so to do as agent for both parties. If he fails to do so, he will have neglected to take reasonable and proper care that the contract made is enforceable should necessity arise. The making of this memorandum, however, does not involve an undertaking or contract on the part of the auctioneer that the person to whom the lot has been knocked down will complete the purchase. It is merely a safeguard which it is his duty to provide for his principal, the vendor, to ensure—as far as it can be ensured—the due completion of the contract by the bidder. If for any reason the bidder refuses to complete the contract, then, armed with this memorandum by the auctioneer, the vendor is in a sound position legally to enforce completion.

Broadly speaking, an auctioneer is agent for both parties—both vendor and purchaser. The latter by bidding for what is on offer authorises the auctioneer to write down his name, and in so doing, therefore, the latter becomes agent for the purchaser. He must, however, do this forthwith, as his authority to be agent for the purchaser only exists at the time for that particular purpose.

It was held in *Bell* v. *Balls* [1899] 1 Ch. 663, that upon the sale of real estate by auction a memorandum of the contract in order to bind the purchaser must be signed by the auctioneer himself, and it must be signed at the time of the sale, unless the purchaser has authorised the auctioneer's clerk to sign as his agent. In that case an auctioneer signed a memorandum a week after the sale, but the purchaser had repudiated his purchase at the time of the sale, and it was held that the auctioneer's authority had ceased and consequently there was no memorandum in writing sufficient to satisfy the requirements of the Statute of Frauds. STIRLING, J., in giving judgment, said that the authorities which had been cited went to show that the authority which the purchaser gives to the auctioneer is to write down the bid, or in other words to make a minute or record of it at the time, *as being part of the transaction*. Such a record is recognised as a memorandum sufficient to satisfy the Statute of Frauds. The learned judge went on to say that he could not find that there was any authority to make a memorandum except it were at the time of the bidding and might fairly be said to be part of the sale. If an auctioneer were allowed to make a memorandum at a later date, evils might arise similar to those which the Statute of Frauds was intended to prevent.

It will be observed that the auctioneer himself, and not his clerk, is vested with authority to sign. If, however, a purchaser by his conduct gives authority to the clerk to sign as his agent, then that memorandum will be sufficient. In the case of *Bird* v. *Boulter* (1833), 110 E.R. 522, an auction sale was going on, and as each lot was knocked down the auctioneer's clerk called out the name of the purchaser, and at a sign of assent from him made a note accordingly in the book. That was held to be a memorandum in writing by an agent lawfully authorised within the Statute of Frauds to act on behalf of the auctioneer, his principal, as in the business of calling out and entering the names he was known and employed by all purchasers who signified their assent. In this respect the decision of *Bird* v. *Boulter* differs from that in *Bell* v. *Balls*.

There are a number of cases on record in which a dispute has arisen and the purchaser has refused to recognise a transaction or to sign the memorandum on the particulars. In *Sims* v. *Landray* [1894] 2 Ch.D. 318, a lot was knocked down at a property sale to the highest bidder, who, at the request of the auctioneer's clerk, gave his name and address as purchaser and stood by while the clerk filled in his name and address in the memorandum in the usual way. When he was asked to sign the memorandum and pay the deposit, however, he excused himself from doing so on the ground that he had no cheque book with him. In spite of this it was held that there was a sufficient signature on his behalf to satisfy the Statute.

In *Chaney* v. *Maclow* [1929] 1 Ch. 461, a dwelling-house was put up for sale by auction and knocked down to the defendant, who refused to sign the memorandum on the particulars when asked to do so by the auctioneer's clerk, giving as his reason the fact that he had only just noticed that one of the conditions of sale made the purchaser liable for certain road-making charges. He went away from the auction room without repudiating the contract, whereupon the auctioneer wrote the defendant's name in the particulars, and subsequently, after ascertaining that the defendant had not called at his office to pay the deposit or sign the memorandum, he signed it himself as the defendant's agent. A week later the defendant repudiated the contract; but it was held by MAUGHAM, J., that the auctioneer's signature at his own office after the sale made it part of the sale transaction, and this was upheld by the Court of Appeal.

Road Accidents and Lord Danesfort's Bill.

In order to consider the alterations in the law as to road accidents proposed by Lord Danesfort's Bill, it may be useful to classify them as follows: (1) Cases where an accident is unavoidable and due to no one's negligence; (2) Those where an accident is due to the negligence or carelessness of one party only; (3) Those into which the essential factor of contributory negligence enters, the factor not being an essential one if the doctrine of *Davis* v. *Mann* (1842), 10 M. & W. 546, applies. As the law stands, an accident of the first class does not give rise to any legal action by a person injured, except against insurers on an insurance covering the event. An accident of the second class gives rise to an action by the party injured against the party whose negligence has caused the accident. On an accident of the third class neither party can sue the other.

Lord Danesfort's Bill naturally leaves accidents of the second class untouched. In those of the first and third class, however, it would change the law where a motor vehicle was involved in the collision, and the party injured was neither driving nor riding in a motor vehicle, by casting a new liability on the person using the motor vehicle, or on any person causing or permitting him to use it, in damages to the party injured.

Having regard to the provisions of Pt. II of the Road Traffic Act, 1930, requiring compulsory third party insurance, the practical effect of the Bill if passed into law as it stood on its second reading would be materially to raise the premiums payable for third party risks, which would be much increased. Those for whose claims it would be raised would be pedestrians, equestrians, persons driving in conveyances drawn by horses or other animals, and, presumably, bicyclists and tricyclists. In a sense, however, bicycles and tricycles are mechanically propelled vehicles which would strictly bring them into the classification of "motor vehicles" within s. 1 of the Road Traffic Act, 1930, and, therefore, of the Bill, which adopts the definition in that section. Since a pedal bicycle is clearly not intended to be a motor vehicle within the Road Traffic Act, 1930, one must assume that, for the purposes of that Act, it is not a mechanically propelled vehicle. As the Bill stands, an owner of an animal lawfully on the road would presumably be compensated for its death or injury by collision with a car if the accident was not wholly due to his negligence in allowing it to be there.

In accidents of the first class, the Bill, in effect, imports the doctrine of *Rylands* v. *Fletcher* (1868), L.R.3, H.L. 330, against motorists and the companies insuring them, in favour of all other users of the road. The doctrine of that case is, of course, that he who brings anything unusual or dangerous on his land guarantees his neighbours against any consequential damage. A motor car, whatever it might have been thirty years ago, is not an unusual object on a road, but it is potentially dangerous. So, no doubt, is a horse, which may bolt even with the most skilful of riders or drivers. If it does so without negligence on the part of the driver, the cases of *Hammack* v. *White* (1862), 11 C.B. (N.S.) 588, and *Manzoni* v. *Douglas* (1880), 6 Q.B.D. 143, establish the proposition that the person injured must suffer without legal redress. A horse, owing to its liability to take fright, is less easily controlled than a car, and to that extent more dangerous. If, therefore, *Rylands* v. *Fletcher* is applied against the owners of cars, but not of horses, the law will become anomalous, discriminating against the owner of the less dangerous thing and in favour of the owner of the more dangerous thing. It might, perhaps, be fairest if the doctrine of *Rylands* v. *Fletcher* is to be imported to roads, to apply it against all road users who bring on to the roads anything which may escape from or cease to be under their control.

Possible injustice under the Bill as it stands, however, appears much more likely to arise on the occurrence of accidents of the third class. The nature of such accidents, and the degree of negligence of each party, are matters capable of almost infinite variation. The Bill would require the motorist, or the insuring company behind him, to compensate a pedestrian, although the latter's carelessness had been a contributing factor to an accident. Under the present law he can recover no compensation in such circumstances. Comment may be made that the present law tends to be somewhat unfair to the pedestrian, who in the normal case is the one who suffers injury, but the new Act may in certain cases be unfair to the motorist or his company, as when a "jay-walker," who has made no effort whatever to take care of himself, is heavily injured. The difficulties which now confront judges and juries when questions of contributory negligence arise were fully discussed in a previous article (73 Sol. J. 414), and are well illustrated by *Neeman* v. *Hosford* (1920), 2 I.R. 258, and, since then, *Swadling* v. *Cooper* [1931] A.C.1. In such circumstances our own suggestion was the application of the principle of the Maritime Conventions Act, 1911, giving a jury power to apportion the total damages of both sides in accordance with their estimate of the degree of blame (see 73 Sol. J. 789). This would certainly be fairer either than, as at present, to allow no damages at all, or, as proposed, to throw them entirely on the motorist, who may possibly be much the least to blame. It would also tend to obviate the very common result, in cases where the defence of contributory negligence is set up (which must approximate 100 per cent.), and has substance (which vastly reduces the percentage) of disagreement amongst the jury.

One class of pedestrian should certainly be excepted from the benefit of the Act, namely, that of persons who insist on walking along the fairway of a road to which a proper footpath is provided. The Highway Code directs pedestrians to walk along the footpath in such case. The effect of s. 45 (4) of the Road Traffic Act, 1930, does not yet appear to have been tested in the courts, but presumably it would be that a pedestrian who failed to take advantage of the safety provided by the footpath would, so to speak, carry his negligence along with him. It would be right that he should continue to do so, for he is "asking for trouble." Perhaps proof that a footpath was too muddy for the use of a reasonably well-shod person should give him his rights again.

The law as to road accidents will probably remain unsatisfactory until the step is made of grading roads, and applying different codes to them. Perhaps on the great arterial roads, where railway speeds are normal and reasonable, pedestrians should have no right of asylum save at indicated crossings, where their right should be absolute. On the other hand, the motorist might almost be regarded as an intruder on remote country roads, and Lord Danesfort's Bill might well apply to him if he ventures on them in all its rigour. Probably also the law as to collisions at cross roads will never work properly until responsibility for avoiding collision is definitely placed on the driver of the vehicle which is on the inferior road.

The Bill as it stands would also appear to apply to damages caused by a car in motion to property fronting a highway, or, indeed, to any property which it may hit and injure. Under the present law frontagers to a highway take such risk as they may from damage caused by inevitable accident, or even by accident caused by irresponsible persons who start a car as in *Ruoff* v. *Long* [1916] 1 K.B. 148. If the Bill is passed the owner of a car will be responsible for inevitable accident due to its use resulting in damage to property. Presumably he would not be responsible for the action of a trespasser or thief who set his car in motion, though the verb "permit" without the guarding adverb "knowingly" might possibly apply if a car was left in such a position that any mischievous person could start it, as in *Martin* v. *Stanborough* (1924), 41 T.L.R. 1. An accident due to the mere presence of a stationary car would hardly be occasioned by its "use," but other remedies might be available if it improperly obstructed a highway.

Liability for Acts done under Statutory Authority.

THERE are certain foundation principles of our law and certain leading cases which, as Lord DUNDREARY would have said, "every fellah knows." The famous leading case of *Rylands* v. *Fletcher* (1868), L.R. 3 H.L. 330, is an example. It is a popular aphorism that a man may do what he likes with his own; but its wings are somewhat clipped by the doctrine expressed in the common law maxim *sic utere tuo ut alienum non laedas*. Thus comes the fundamental principle enunciated by the House of Lords in *Rylands* v. *Fletcher*, that a person who for his own purposes brings on to his lands, and collects and keeps there, anything likely to do mischief if it escapes must keep it in at his peril and if he does not do so is answerable for all the damage which is the natural consequence of its escape.

Rigid though this doctrine is, yet, like most rules, whether of law or in other spheres, there have been exceptions propounded equally as important and far-reaching as the rule. This recalls Lord MACNAGHTEN'S witty *dictum* on the once-great *Shelley's Case*, that "It is one thing to put a case like Shelley's in a nutshell and another thing to keep it there" (Judgment in *Forwell* v. *Van Grutten* [1897] A.C. 658).

One class of exception engrafted on the general rule laid down in *Rylands* v. *Fletcher* may be illustrated by the case of *Nichols* v. *Marsland* (1876), 2 Ex. D. 1, which absolves from liability where the escape was caused by *vis major* or act of God.

Another important category is that relating to acts done in pursuance of statutory authority. This class of exception is lucidly stated in the judgment of Lord BLACKBURN in the case of *Geddis* v. *Proprietors of Bann Reservoir* (1878), 3 A.C. 430. He said: "It is now thoroughly well established that no action will lie for doing that which the legislature has authorised if it be done without negligence although it does occasion damage to anyone; but an action does lie for doing that which the legislature has authorised, if it be done negligently" (at pp. 455, 456).

This principle of exemption by statutory authorisation is exemplified in a variety of cases. Thus, a railway company authorised by Act of Parliament to use locomotive engines are not indictable for a nuisance if their engines frighten the horses of persons travelling along a highway running parallel to the line: *R.* v. *Pease* (1832), 4 B. & Ad. 30. Nor are they liable to pay compensation for damage or annoyance arising from vibration occasioned, without negligence, by the passing of trains even though the value of the property has been actually depreciated thereby: *Hammersmith Railway Company* v. *Brand* (1869), L.R. 4 H.L. 171. See also *Ash* v. *Great Northern, Piccadilly & Brompton Railway Company* (1903), 67 J.P. 417. Similarly, in the case of a canal company authorised by Act of Parliament to construct a canal. If water escapes without any negligence on the part of the company, they are not liable for the damage thereby caused: *Dunn* v. *Proprietors of Birmingham Canal Navigation* (1872), L.R. 8 Q.B. 42. In this case COCKBURN, C.J., said that the damage of which the plaintiffs complained was caused by the keeping of water in the canal and this having been made lawful in the company by statute, it could not be made the ground of an action of tort. In *Harrison* v. *Southwark and Vauxhall Water Company* [1891] 2 Ch. 409, a water company were authorised by their private Act of Parliament to sink a shaft. The pumps used in the course of their operations were noisy and interfered with the plaintiff's comfort. It was held that the statutory authority conferred on the defendants to sink the shaft included all things reasonably necessary for the execution of the work, and having been guilty of no negligence in the conduct of their operations, no action lay against them. Another important type of case is *Snook* v. *Grand Junction Waterworks Company* (1886), 2 T.L.R. 308. This decided that a waterworks company incorporated by Act of Parliament for the purpose of supplying water does not come within the doctrine of *Rylands* v. *Fletcher* in the event of water escaping from a fractured water main where the accident happened without negligence on the part of the company. This case was approved in and followed by *Green* v. *Chelsea Waterworks Company* (1894), 10 T.L.R. 259. Here, a water main belonging to the defendant company burst, and the escaping water therefrom flooded the plaintiff's premises, doing considerable damage. The court held that as the defendants were authorised by statute to lay the main and not having been guilty of any negligence they were not liable in damages to the plaintiff.

But even statutory authorisation does not confer absolute immunity. An exception has been grafted on this exception from the common law doctrine, thus recalling the doctrine of "a use upon a use" in the old law of real property. This important category of exceptions is illustrated in the case of *Metropolitan Asylums District* v. *Hill* (1881), 6 A.C. 193. The principle laid down by this decision of the House of Lords may be expressed in the following much-cited passage in Lord WATSON'S judgment in the case: "Where the terms of the statute are not imperative, but permissive, when it is left to the discretion of the persons empowered to determine whether the general powers committed to them shall be put into execution or not, I think the fair inference is that the legislature intended that discretion to be exercised in strict conformity with private rights, and did not intend to confer licence to commit nuisance in any place which might be selected for the purpose." The Asylums Board were empowered by statute to erect and maintain a small-pox hospital, but they were not compelled to erect it within certain defined limits. They could not therefore plead the statute as authority for erecting it in a situation where it would be a nuisance. The distinction between this case and the railway cases quoted above is brought out by Lord HALSBURY in his judgment in *London Brighton & South Coast Railway Company* v. *Truman* (1885), 11 A.C. 45. He says: "The railway Acts, treated as a well-known and recognised class of legislation, were expressly and carefully distinguished from the permissive character of the legislation which your lordships were then construing. Broadly stated, the distinction taken amounted to this, that a small-pox hospital might be built and maintained if it could be done without creating a nuisance; whereas the railway Acts were assumed to establish the proposition that the railway might be made whether a nuisance were created or not."

But the fact that works are carried out under the express authority of an Act of Parliament is no defence if the statute contains a provision, which is now not uncommon, that nothing therein contained should exempt them from any action or proceeding for negligence or nuisance: See, e.g., *Midwood & Co.* v. *Manchester Corporation* [1905] 2 K.B. 597; *Charing Cross, West End & City Electricity Supply Company* v. *London Hydraulic Power Company* [1914] 3 K.B. 772.

The case of *Burniston* v. *Bangor Corporation* which was recently before the Court of Appeal of Northern Ireland is worthy of mention. It is interesting as being an attempt to get round the principle so long ago laid down in the cases of *Snook* v. *Grand Junction Waterworks Company* and *Green* v. *Chelsea Waterworks Company*, previously referred to, and for a review of the authorities on the question. The Bangor Corporation were authorised by statute to maintain a reservoir, lay mains in the road and supply water therefrom to the inhabitants. One of the mains burst and did damage to the plaintiff's premises by flooding. The question for the decision of the court was whether the defendant corporation were liable for the damage done to the plaintiff's property by the bursting of their water-main in the absence of proof of negligence on the part of the defendants. Counsel on behalf of the plaintiff admitted before the Court of Appeal

that the mere bursting of the pipe was not in itself evidence of negligence. He contended, however, that the doctrine of *Rylands* v. *Fletcher* applied, and endeavoured to distinguish the case of *Green* v. *Chelsea Waterworks Company* on the ground that the duty case upon the company in that case of constructing the waterworks was mandatory, whereas, he argued, the duty imposed by statute upon the Bangor Corporation was optional. This argument was based on the passage from Lord WATSON's judgment in *Metropolitan Asylums Board* v. *Hill, supra.* The defendants relied on the principle laid down by Lord BLACKBURN in *Geddis* v. *Proprietors of Bann Reservoir, ante.* The Court of Appeal reviewed the leading authorities on the point. They held that the statutory duty imposed on the defendant corporation was absolute, and that the case could not be distinguished from *Green* v. *Chelsea Waterworks Company.* They therefore gave judgment for the defendants and supported the decisions which have so long been accepted and acted upon in this connexion.

The Finance Act, 1932.

THE Finance Act, 1932, which received the Royal Assent on 16th June, though its tariff provisions may affect the general public *a capite ad calcem*, will not greatly concern the income tax payer as such. The Act contains four sections dealing with the assessment of income tax—ss. 17–20.

Section 17 deals with the situation created by the decision in the House of Lords, on 11th March, 1932, in the case of *Stedeford* v. *Beloe.* It will be remembered that the respondent in that case, a former headmaster of Bradfield College, was assessed under Schedule E of the Income Tax Act, 1918, in respect of an annual pension paid to him by the authorities of the college, a payment which in the exercise of their discretion they were empowered to make out of funds under their control. There was no superannuation fund, and the respondent had no legal rights in the matter of a pension, which in his case was on the same footing as any other voluntary pension paid to an old servant. The Special Commissioners of Income Tax, on an appeal, discharged the assessment on Mr. BELOE, and the King's Bench Division, the Court of Appeal and the House of Lords successively upheld their decision.

This section makes a voluntary pension liable to income tax.

Section 18 provides the relief promised by Mr. CHAMBERLAIN's predecessor in the office of Chancellor of the Exchequer to users of plant and machinery by increasing the allowance for depreciation by wear and tear by one-tenth. Hence the peculiar position will arise that Income Tax Commissioners having made allowances from profits assessed of such an amount for wear and tear as they consider "just and reasonable," will be required to add one-tenth to that amount.

Section 19 deals with the carry-forward of trading losses under Schedule D (Finance Act, 1926, s. 33). As the law stood previously the allowances for wear and tear, and the set-off for trading losses, could be carried forward and allowed against profits assessable in subsequent years, in cases where the amount of the assessments for a year was insufficient to absorb the full amount of this allowance or set-off to be given. The carry-forward for wear and tear is not limited as regards time, but as regards losses on the expiration of six years after the year in which the loss occurred the right to set-off this loss expired. The consequence was that the deduction for wear and tear which by law took precedence of the set-off of a loss in a particular year might delay the set-off of a loss beyond the period of six years. The section provides that to the extent that the deferment of the set-off of a loss has been caused by a deduction or carry forward of allowances for wear and tear the time limit of six years as regards losses shall not operate.

Section 20 provides that subject to certain conditions being fulfilled life insurance premiums paid to underwriters being members of Lloyds or to any other association of underwriters will be eligible for allowance as a deduction in computing income tax liability, in the same way as premiums paid to an insurance company.

Recovery of Costs.

A SOLICITOR frequently finds difficulty in obtaining payment of his costs, and it then becomes a question as to the best method to adopt to recover them.

He may, of course, commence an action for recovery, and in this event the provisions of s. 37 of the Solicitors Act, 1843, must be noticed. The section provides in the first place that no action can be brought to recover the amount of a bill of costs until one month has elapsed since delivery of such bill to the client. This provision has now been modified by s. 2 of the Legal Practitioners Act, 1875, which provides that the court may give leave to the solicitor to commence an action for the recovery of his bill of costs before the period of one month has elapsed where it can be shown that the debtor is leaving England, or has become a bankrupt, or is a liquidating or compounding debtor, or has taken any other steps which would defeat the solicitor in obtaining payment of his bill. The bill must give reasonable and sufficient information of the work done: *In re Pomeroy & Tanner*, 76 L.T. 149, and must be signed by the solicitor or be enclosed in a letter signed by him.

The month mentioned in the section is a calendar month, and must be calculated by excluding the day on which the bill is delivered and the day on which the action is commenced: see the old case of *Blunt* v. *Heslop*, 8 Ad. & E. 577. Where the bill is sent by post, then the month commences on the day following the receipt of the bill by the client, and the solicitor will have to determine the day when the bill should normally reach the client and should calculate the month from the following day: see *Brown* v. *Black* [1912] 1 K.B. 316.

There is no limit of time in which an action must be brought on a bill subject to the month referred to above, and subject also to the Statutes of Limitations. The effect of the latter is of considerable importance, and it should be observed that the cause of action arises as soon as the work for which the solicitor is retained has been completed. Consequently, the Statute of Limitations begins to run from that date and not from the time when the bill is delivered, or from the expiration of the month mentioned in s. 37: see *Coburn* v. *Colledge* [1897] 1 Q.B. 702. This point must be carefully borne in mind, having regard to the delay which frequently takes place in rendering bills of costs.

Where some of the items in a bill are statute barred and some are not, there is nothing to prevent an action from being commenced on the items which are not statute barred: see *Blake* v. *Hummell*, 51 L.T. 430. On the other hand, where a payment is made on account of a bill some of the items of which are statute barred, it was decided that the payment must be taken to be on account of the items not statute barred: see *Boswell Merritt* v. *Bowsell* [1906] 2 Ch. 359.

In the alternative to commencing an action for recovery of the bill of costs, the solicitor may obtain a reference to tax under s. 37, *supra*, at any time after the month mentioned in that section has expired, and may, on obtaining the certificate of taxation, proceed to enforce payment "according to the course of the court in which such reference shall be made out": see s. 43 of the Act.

This procedure is frequently more expeditious than that of commencing an action, and in any case, the costs would have to be taxed, for even under Ord. XIV it is usual for the master to order the bill to be referred to a taxing master with power to

sign judgment for the amount found to be due: see *Smith* v. *Edwards*, 22 Q.B.D. 10.

In this connexion an interesting case (*Hamilton* v. *Bell and Aldridge*) was decided in the House of Lords on the 30th May last, and we are indebted to a subscriber for the particulars thereof. In that case the respondents delivered their bills of costs and obtained an order to tax. Their costs were duly taxed and a taxing master's certificate was obtained in the usual form. The client then carried in objections to taxation but the judge refused to review. The appellant also applied to the judge to set aside a master's order giving the respondents leave to sign judgment for the amount of the costs certified by the taxing master, but again the judge refused to vary the master's order. The appellant appealed against both orders, but they were upheld by the Court of Appeal.

The case was carried to the House of Lords, and the appellant's case, briefly, was that (*a*) in regard to certain matters contained in the bill he had never given the respondents a retainer at all; (*b*) that there was a verbal agreement between the parties for the payment of a lump sum in satisfaction of the costs and that the taxing master had no jurisdiction to determine whether or not there was such an agreement; (*c*) that the respondents had been negligent and were not therefore entitled to the costs; and (*d*) that in the absence of any direction to pay in the orders for taxation or in the certificate, the master had no jurisdiction to give leave to sign judgment, and that the judgment signed could not stand.

So far as the question of retainer was concerned, the House found that the point had never been taken before the taxing master, nor on the objections to taxation, and that the appellant was therefore precluded from raising it before the House of Lords. The House expressed no opinion on the second point. The third point failed, as of course, it was bound to fail, on the ground that the appellant's proper remedy was by action. The fourth point raised an interesting question on the wording of s. 43 of the Solicitors Act, 1843, and the House found that the words "amount certified to be due and directed to be paid" in that section, meant nothing more than the amount which the taxing master found and certified to be due, although the view was expressed that the language used was somewhat unfortunate. The words gave the taxing master no jurisdiction to order payment of the costs, and accordingly the order for judgment must stand since the certificate had been properly made out in accordance with the section.

Legal Maxims.

CUJUS EST SOLUM, EJUS EST USQUE AD CŒLUM.

"A FEE simple is the most extensive in quantum, and the most absolute in respect to the rights which it confers, of all estates known to the law . . . for all practical purposes of ownership, it differs from the absolute dominion of a chattel in nothing except the physical indestructibility of its subject": Challis, "Real Property," p. 218. Cheshire, in his "Modern Real Property" (2nd ed.), pp. 116 and 117, adopts this passage and observes: "We may therefore brave the wrath of the purists and describe a fee simple tenant as an absolute owner."

The literal application of the maxim—*cujus est solum, ejus est usque ad cœlum*—implies that the ownership of land carries with it equally extensive rights in respect of the superincumbent column of air. This is, however, a matter of considerable doubt, and an acute conflict of opinion occurs on the question whether a wrongful entry into this column is actionable as a trespass.

This question might have been settled in relation to aircraft were it not for the provisions of the Air Navigation Act, 1920. Section 9 (1) provides: "No action shall lie in respect of trespass or in respect of nuisance, by reason only of the flight of aircraft over any property at a height above the ground, which, having regard to wind, weather, and all the circumstances of the case, is reasonable, or the ordinary incidents of such flight, so long as the provisions of this Act and any Order made thereunder and of the Convention (the International Convention of 1919) are duly complied with; but where material damage or loss is caused by an aircraft in flight, taking off, or landing, or by any person in any such aircraft, to any person on land or water, damages shall be recoverable from the owner of the aircraft in respect of such damage or loss, without proof of negligence or intention or other cause of action, as though the same had been caused by his wilful act, neglect or default . . ."

The protection given by the first part of s. 9 (1) extends only to aircraft observing the specified conditions. If, then, a flight is made in contravention of such conditions, though without causing "material damage or loss," it is material to consider whether there is any remedy at common law for an entry into the column of air above another's land.

The decisions on this branch of law are singularly unsatisfactory, and there are three views:—

(1) That such an entry will found an action of trespass: Pollock, "Torts" (12th ed.), pp. 352-3.

(2) That it is actionable only on proof of actual damage: Salmond, "Torts" (17th ed.), pp. 237-8.

(3) That it is a trespass if within the range of effective possession, but is actionable only on proof of actual damage if without such range: Pollock, "Torts," pp. 352-3.

(1) "It does not seem possible on the principles of the common law to assign any reason why an entry above the surface should not also be a trespass, unless indeed it can be said that the scope of possible trespass is limited by that of possible effective possession, which might be the most reasonable rule": Pollock, "Torts" (12th ed.), p. 352. This view is supported by the observations of BLACKBURN, J., in *Kenyon* v. *Hart* (1865), 6 B. & S. 249, at p. 252.

In *Wandsworth Board of Works* v. *United Telephone Co.* (1884), 13 Q.B.D. 904, BOWEN, L.J., at p. 919, said: ". . . the man who has land has everything above it, or is entitled at all events to object to anything else being put over it." FRY, L.J., in the same case, at p. 927, said: "I wish to observe that in coming to this conclusion I am not expressing the slightest doubt with regard to the rights of the ordinary proprietors of land. . . . As at present advised, I entertain no doubt that an ordinary proprietor of land can cut and remove wire placed at any height above his freehold." These observations appear to be consistent with each of the views, for the right to remove an obstruction is a necessary incident of ownership, but does not necessarily give an action of trespass: see *Lemmon* v. *Webb* [1895] A.C. 1.

Recently, in *Gifford* v. *Dent* [1926] W.N. 336, an injunction was granted compelling the defendant to remove a large sign erected outside the second floor over a forecourt. ROMER, J., said that it appeared to him that the projection was clearly a trespass upon the forecourt.

(2) "It is submitted, however, that there can be no trespass without some physical contact with the land (including, of course, buildings, trees, and other things attached to the soil), and that a mere entry into the air space above the land is not an actionable wrong unless it causes some harm, danger, or inconvenience to the occupier of the surface. When any such harm, danger, or inconvenience does exist, there is a cause of action in the nature of a nuisance" (Salmond, "Torts," 17th ed., p. 238). This view finds support in the judgment of Lord ELLENBOROUGH, in *Pickering* v. *Rudd* (1815), 4 Camp. 219, in which a board erected by the defendant overhung the plaintiff's land. Projections of this sort were treated as nuisances in *Fay* v. *Prentice* (1845), 1 C.B. 828; *Baten's Case* (1610), 9 Rep. 53; and *Penruddock's Case* (1597), 5 Rep. 100. It should be observed, however, that all these cases are very old.

(3) There are no cases which, even indirectly, support the third view, though, as POLLOCK points out, this rule is to be found in the German and Swiss Civil Codes. The most recent case, *Gifford* v. *Dent*, is, obviously, not inconsistent with it, for the sign was clearly within the range of effective possession.

The great difficulty is to define the range of "effective possession." It must include (*a*) the air space of which the occupier has actually taken possession, e.g., by flying aircraft in it, and (*b*) the air space reasonably necessary to the enjoyment of the land.

A trespass is an infringement of the right to possession of land, and is actionable only at the suit of the person in actual or constructive possession. The same test must be applied in the case of a wrongful entry into the air space above land. If POLLOCK's view be right, then it must be that the act of taking possession of the land gives constructive possession of the air-space above it without limit. On the other hand, the air-space or super-incumbent column of air is an intangible thing, and it may very well be that, although there is a right to enjoy it, there cannot strictly be possession of it. But an owner of land has, it seems, a right to do with the air-space as he likes; he can build in it, and he can remove obstructions placed therein. Possession of land cannot be enjoyed without some air-space, and so far, at all events, the land and the necessary air-space would seem to be inseparable. If that is so, the act of taking possession of land, would, it is submitted, give constructive, if not actual, possession of the air-space reasonably necessary for the exercise of possession. It may be that trespass by air is limited to the range of effective possession.

Whichever view is correct, and it is thought that the third is the most consistent with present conditions, two things are clear. First, an owner in possession of land has a right to remove an obstruction in the air-space above his land (*Wandsworth Board of Works* v. *United Telephone Co.*; *Lemmon* v. *Webb*). Secondly, where there is actual damage, the owner in possession would be adequately protected by the law of nuisance and the Air Navigation Act, 1920.

This conflict of opinion casts doubt upon the limits of the maxim, but, inasmuch as no sane person is likely to bring an action for a trumpery case where no actual harm, danger, or inconvenience has resulted, the practical value of settling the point is as slight as the likelihood that it will be settled.

Company Law and Practice.

CXXXV.

SURPLUS ASSETS IN WINDING UP.—I.

HAPPY the shareholder who, in a winding up, when all the debts and liabilities of his company have been paid, together with the costs of the winding up, finds that, as a contributory, he is entitled to receive, and does in fact receive, sums from the liquidator in respect of his holding of capital; thrice happy the shareholder who gets back in full the capital paid up on his shares, and then finds that there is still a surplus to quarrel about. Such was the position in *Re John Dry Steam Tugs Limited* [1932] 1 Ch. 594; but before we examine that case it is necessary to deal with the subject to some extent historically.

First, we may turn to *Re Espuela Land & Cattle Co.* [1909] 2 Ch. 187, where SWINFEN EADY, J., pointed out that the rights of shareholders in a surplus available after payment of debts and repayment of capital depend upon the true construction of the memorandum and articles of association. One is perhaps rather apt to lose sight of this general, and fundamental, principle in attempting to follow the various decisions on the point—but it is vital to a true understanding of the position; and one may well, in this connexion, bear in mind the dictum of one learned judge of the Chancery Division to the effect that in construing a will one should look at the words to see what they really mean, and then look to the decisions to see if there is any decision which would prevent one from coming to the conclusion in law that the words do mean that. Bearing this in mind, it can be said that the authorities, save in so far as they lay down any general principle which can properly and safely be universally applied, are of no assistance on the point; and, indeed, in this case, they tend to make the subject less easy to understand, because there appears to be some conflict between them. A decision of the Court of Appeal would be welcome, but in its absence it is at least possible to say that the current of authority is flowing in one particular direction.

But to return to the *Espuela Case*; the capital of the company was divided into 10 per cent. preference shares of £5 each, and ordinary shares of 1s. each. This arrangement was the result of a reduction of capital effected by cancelling capital lost or unrepresented by available assets to the extent of £4 19s. per share on the ordinary shares; this fact is not directly material for the purposes of the decision, but it is interesting to note it here, because it will be seen, when the result of the case is considered, what a staggeringly adverse effect this reduction had, in the winding up, on the holders of the ordinary shares. The preference shares were expressed to be cumulative, but SWINFEN EADY, J., held that, in the winding up, the holders of the preference shares were not entitled to claim out of the assets of the company any sums in respect of their unpaid dividends, which sums were of a very substantial amount; this decision might well lead us up to another controversial subject, which has been discussed in these columns, and which I do not wish further to ventilate now—those familiar with the subject will remember the conflict of judicial opinion there.

From that digression we may once more return to the facts in the *Espuela Case*. The assets of the company were sold for a sum largely in excess of the total liabilities and issued share capital of the company, and the company went into voluntary liquidation. After repayment of the paid-up capital the liquidator had a surplus of about £106,500, and the whole of this was claimed by the ordinary shareholders, while the preference shareholders claimed to share rateably in it (as I indicated above, the preference shareholders also claimed arrears—I use a convenient, if somewhat loose and inaccurate, expression—of their preferential dividend). The memorandum provided that the preference shares had a preferential right to be repaid the amount paid up thereon and interest out of the assets of the company if the company should be wound up; while the articles said that, in case the company should at any time be wound up, the preference shares should be entitled to be paid out of the property and assets of the company the full amount of capital paid up thereon in preference and priority to and before any payment should be made thereout in respect of the ordinary shares.

The memorandum also provided that the capital might be increased by means of any shares not having any preference or priority over the preference shares, or so as in any way to interfere or compete with them, and it was argued from this that the preference shareholder's only right must be a right to the return of his capital, because, if his rights went further than this, any issue of new shares would be bound to compete with them. The learned judge, however, did not accede to this argument, and he held that the surplus must be distributed rateably between preference and ordinary shareholders according to the nominal amount of their shares. Now it will be seen what a blow the reduction of capital dealt to the ordinary shareholders, for by it their shares were reduced from an amount equal to the nominal amount of the preference shares to an amount only one-hundredth of such nominal amount; so that, had they refused to agree to the reduction, they would, as things turned out, have got one hundred times what they did in the winding up.

The usual practice at the present day is to provide that the preference shares shall be entitled to a return of capital before

the ordinary shares, but to no further right to participate in profits or assets; in the absence, however, of any words such as the last it is, to put it no higher, quite likely that they will share in the distribution of a surplus in winding up rateably with the ordinary shares. One cannot put it any higher for two reasons, one that it must be a question of the construction of the particular memorandum and articles concerned, and the second that there are decisions which are at variance with the decision of SWINFEN EADY, J., above referred to.

The next case is that of *Re National Telephone Co.* [1914] 1 Ch. 755, which is one of considerable complication, and it takes a path divergent from that of SWINFEN EADY, J.; I do not wish to introduce any confusion here by saying more than necessary about this very special case, and will content myself with making a short quotation from the judgment of SARGANT, J., as he then was, in that case. At p. 774 he says: "... it appears to me that the weight of authority is in favour of the view that, either with regard to dividend or with regard to the rights in a winding up, the express gift or attachment of preferential rights to preference shares, on their creation, is, *primâ facie*, a definition of the whole of their rights in that respect, and negatives any further or other right to which, but for the specified rights, they would have been entitled." This passage has been the subject of some criticism, and ASTBURY, J., in *Re Fraser & Chalmers Limited* [1919] 2 Ch. 114, differed from the views there expressed, though in *Collaroy Co.* v. *Giffard* [1928] Ch. 144, the same learned judge expressed the opinion that he had been wrong in so dissenting, and approved the statement of SARGANT, J.

With such divergence of opinion on the judicial bench, what can the humble practitioner do? It seems to be clear that, notwithstanding ASTBURY, J.'s support of the views of SARGANT, J., the judicial bench as a whole is by no means prepared to accept the proposition that the express attachment of preferential rights negatives, in particular, the right of the holders of shares having those preferential rights to participate in surplus assets.

Thus, in *Re Fraser & Chalmers, supra*, the earlier of the cases of ASTBURY, J., in which he differs from the decision in *Re National Telephone Co.*, the articles provided that, in the event of the winding up of the company, the holders of the preference shares should have a preferential right as regards repayment of capital, and accordingly should be entitled to have the surplus assets applied, first, in paying off the capital paid up on the preference shares held by them respectively; the remaining part of this article deals with arrears of dividend, and is not material for this present purpose. ASTBURY, J., refused here to treat the clause conferring the preferential rights as absolutely exhaustive, and held that the preference shareholders were entitled to share in the surplus assets, in accordance with their ordinary rights as corporators. Next week we will go further into the changed point of view subsequently adopted by the learned judge.

(*To be continued.*)

A Conveyancer's Diary.

Insurances on Mortgaged Property.

In another column of this issue there is published a letter on this subject from Mr. John P. H. Cookson. I am glad to note the clause in Mr. Emmet's useful book, which, I think, is as good as any that can be devised. The mortgagor covenants not to insure the property independently, and further that should he do so he will hold all money received in trust for the mortgagee, to whom it is to be paid in reduction of the mortgage debt.

I had thought of a clause of that kind, but am not sure how far it would avail the mortgagee.

In the first place, the mortgagor would have (at least, so I think) a statutory right to insist upon the insurance money being laid out in reinstating the buildings destroyed or damaged, and his covenant would not, I think, prevail over that statutory right.

As to insurances by tenants and others interested in the property, it may be that the usual clause in policies would not apply, but there again the right to have the money applied in reinstating the buildings could (and, of course, in most cases would) be exercised. If the insurance office with whom a tenant had insured were to proceed to lay out the money in that way then, whatever the terms of the mortgagee's policy might be, the mortgagee could not recover anything under it, because there would not be anything in respect of which he was entitled to indemnity. In the meantime the mortgagee would be unable to realise his security.

What would be the position as between the two insurance offices in such a case does not appear to be very clear, but in the absence of agreement between them it is difficult to see what right the expending office would have for contribution against the other. I think, however, that there is an arrangement in that respect between the principal insurance companies.

The inconvenience which may be caused to a mortgagee in such circumstances was brought home to me some years ago in a matter in which I was concerned.

A mortgagor having insured the property (with other adjoining buildings belonging to him), there was considerable difficulty in assessing the amount payable in respect of the mortgaged portion. That, of course, might have happened if there had been no mortgage.

Then it was found that the mortgagee was also covered with another office, and the two offices could not agree as to the amount which each ought to pay. That having at length been settled, both offices were required to expend the money in rebuilding. They could not, however, agree upon an architect or upon a contractor, and the dispute went on for about two years—I think even longer.

In the meantime the mortgagee died, and the mortgage money was urgently required as it was practically all that he had. The money could not be raised, although I think that eventually the solicitor for the executors advanced a certain amount out of his own pocket to pay debts and duties.

That was a most inconvenient state of things, and I do not know that if Mr. Emmet's clause had been inserted in the mortgage that would have afforded any remedy. I am far from saying, however, that the clause should not be used. I think that it should.

Puisne Mortgages—Priorities.

I have dealt with this subject before, but make no apology for returning to it, because I have recently had occasion to consider it in practice, and I think that it is of considerable importance. Nevertheless we are without any judicial guidance in the matter.

The trouble arises on any sale by a puisne mortgagee or any transfer by such a mortgagee.

As we know, the expression "puisne mortgage" now means a legal mortgage not protected by a deposit of deeds. All puisne mortgages require to be registered under the L.C.A., 1925, s. 10 (1), Class C. It is possible for an intending puisne mortgagee to protect himself completely by taking advantage of the provisions of the L.P. (Amend.) Act, 1926, s. 4, by giving a "priority notice" before registration is to take effect.

It often happens, however, in practice, that no priority notice is given, and that the registration of the puisne mortgage is delayed, at any rate for a short time.

In that state of things a difficult problem presents itself because it might be that another puisne mortgage had been created in the meantime, and it is by no means certain how the priorities are to be determined between such puisne mortgagees.

(*Continued on page* 451).

Before 1926 a second mortgagee would give notice to the first mortgagee and protect himself in that way, his estate being an equitable one merely. Now, the second mortgagee has a legal estate, and notice to the first mortgagee may not avail him even against another encumbrancer who has given no such notice.

Suppose, for example, that there is a puisne mortgage in favour of A, who does not register until some days after the completion of the mortgage, but he does give notice to a first mortgagee at once. In the interim the mortgagor creates another puisne mortgage in favour of B, who does not give any such notice and does not register his mortgage until after that of A has been registered, or perhaps not at all. What is the position as between A and B? And assuming that the first mortgagee sells and realises more than sufficient to discharge his mortgage debt with interest and costs to whom is he to pay the balance if B comes along and claims it?

If we look at s. 13 (2) of the L.C.A., 1925, it seems plain enough so far as the relative rights of A and B are concerned. The sub-section reads :—

> "A land charge of Class B, Class C or Class D created or arising after the commencement of this Act shall . . . be void as against a purchaser of the land charged therewith or of any interest in such land unless the land charge is registered in the appropriate register before the completion of the purchase."

Now, under this sub-section it is as plain as possible that, in the case supposed, the mortgage of A is void as against B, who is a purchaser (see L.C.A., 1925, s. 20 (8)), unless it can be said that the context of the sub-section requires that the word "purchaser" shall not include a subsequent puisne mortgagee, and, for my part, I can find no such context.

Then, so far as regards the position of the first mortgagee having notice of A's mortgage, we must turn to s. 199 of the L.P.A., 1925, which so far as material is as follows :—

> "(1) A purchaser shall not be prejudicially affected by notice of—
>
> (i) Any instrument or matter capable of registration under the provisions of the Land Charges Act, 1925, or any enactment which it replaces which is void or not enforceable as against him under that Act or enactment by reason of the non-registration thereof."

This is rather a hard nut to crack! If A's mortgage is void against B, the latter can claim to be paid in priority to A, but it does not seem that A's mortgage is void as against the first mortgagee for want of registration. So far as the first mortgagee is concerned he is not "prejudicially affected" by the notice of either of the puisne mortgages because it makes no difference to him whether he pays A or B. On the other hand, in the case of a sale by B, a purchaser from him would be "prejudicially affected" if he had to take subject to A's mortgage which it seems he would not, as "non-registration" must mean "non-registration in due time," i.e., before the completion of the mortgage to B had rendered his (A's) mortgage void as against B, and consequently (so it would appear) as against any purchaser from B.

I should be grateful to any reader who could read me this riddle.

Then to make confusion worse confounded we have s. 97 of the L.P.A., 1925 :—

> "Every mortgage affecting a legal estate in land made after the commencement of this Act, whether legal or equitable (not being a mortgage protected by the deposit of documents relating to the legal estate affected) shall rank according to its date of registration as a land charge pursuant to the Land Charges Act, 1925."

This seems to be in direct conflict with the provisions of s. 13 (2) of the L.C.A., 1925.

In the case which I have been discussing, B, if he registered, would rank after A under s. 97 of the L.P.A., but, whether he registered or not, he would have priority over A under s. 13 (2) of the L.C.A., 1925.

I can find no answer to that unless, as I have said, it is possible to discover a context in s. 13 (2) of the L.C.A. which excludes a puisne mortgagee from being a "purchaser" within the meaning of that word as used in that sub-section.

As the matter stands at present it seems to me that it would never be safe to take a transfer of a puisne mortgage or a title under a puisne mortgagee unless he had taken advantage of the provisions of s. 4 of the L.P. (Amend.) A., 1926.

Landlord and Tenant Notebook.

Arbitration as to Rent of Agricultural Holding.

This week I propose to raise a question of interpretation on which the law reports have as yet provided us with no assistance. I do so in the hope that any readers who have had practical experience of the working of a particular section of the Agricultural Holdings Act, 1923, will be willing to discuss the matter.

The expression "arbitration as to the rent properly payable," which occurs several times in s. 12, suggests, when taken by itself, that a statutory increase or decrease could be enforced. But the ultimate object of the section is quite different, and is very lucidly stated in a judgment of Scrutton, L.J., in *Re Perrett and Bennett-Stanford's Arbitration* [1922] 2 K.B. 592, C.A., at p. 597 : "Parliament, I judge from the words used, has intended to give the tenant a right to continue his tenancy, either under s. 10 (of the Agriculture Act, 1920; replaced by s. 12 of the A.H.A.) after notice to quit or under s. 13 (replaced by *ib.*, s. 23) after the termination of the term at a rent to be fixed by arbitration. Sub-section (*e*) of sub-s. (1) of s. 10 provides that if the landlord will not go to arbitration the tenant can obtain his compensation, though he gives notice to quit."

The compensation referred to is compensation for disturbance, and sub-s. (1) (*e*) sets forth one of several sets of circumstances under which the right to compensation is lost if the notice to quit states that it is given for the reason indicated, while sub-s. (3) states the only circumstances under which a tenant who gives notice to quit retains his right to compensation. In both cases failure or refusal within a reasonable time to agree to a written demand for arbitration as to rent to be paid from the next ensuing date at which the tenancy can be determined by notice to quit is the essential ground. There are one or two differences. There is a proviso to sub-s. (3), the effect of which is that the right to compensation is not retained if the landlord could have given notice to quit for reasons of bad farming, non-payment of rent, materially prejudicing the lessor's interests by a breach of the agreement, or failing to remedy a remediable breach. The other difference may some day raise a minor question of interpretation. Under sub-s. (3) the tenant has to terminate the tenancy because of the refusal or failure, and to state that reason on his notice to quit. Under sub-s. (1) (*e*) the landlord merely has to state that the notice is given for the reason mentioned. So whether the statute countenances duplicity, *quære!*

In so far as the real object of the Act is to give tenants a measure of security of tenure, a parallel can be drawn with the Rent Restriction Acts, which recognise the fact that security of tenure without control of rent is impossible. And in so far as it provides machinery for determining what rent is properly payable, a parallel might be drawn with the provisions governing new leases enacted by the L.T.A., 1927.

But what troubles me is that the section seems to contemplate refusal or failure to agree rather than acceptance of the demand, and I should like to state an imaginary problem which may have occurred in practice but has not found its way into the reports.

A tenant farmer, holding under a Michaelmas tenancy, pays £100 per year and considers that rental excessive. In June, he demands of his landlord an arbitration as to the rent properly payable as from Michaelmas next year. If the landlord refuses or ignores the demand, the farmer will be able to claim between £100 and £200 when he goes, if he thereby incurs the right kind of expense: sub-s. (6). But suppose that the landlord, if I may use the expression, does not play the (tenant's) game, and replies that he will be delighted to arbitrate. The arbitration must be one under the Act: sub-ss. (1) (*e*), (3), (5) (*a*); so an arbitrator is agreed or nominated in accordance with r. 1 of the Arbitration Rules in Sched. II. He hears evidence, including, possibly, speculations as to the likelihood of better transport and other facilities being available more than a year hence, but disregarding dilapidations and deterioration permitted by the tenant and disregarding any improvements (whether this means the statutory improvements or improvements generally is another moot point) voluntarily effected by the tenant: sub-s. (5) (*b*). And suppose that within twenty-eight days of his appointment (r. 6) he announces that he has determined that the rent properly payable as from Michaelmas of the following year is £90 *per annum*.

"Announces that he has determined" is used advisedly; for to say "publishes an award" would be to beg the question.

If there be an "award," then by r. 12 it "shall be final and binding upon the parties."

Is there? Section 19, which deals with enforcing awards, specifies "a sum agreed or awarded . . . to be paid for compensation, costs or otherwise"; and a question has been referred to arbitration, within the meaning of s. 16, which defines the wide scope of the procedure. But surely "and otherwise" must be construed *ejusdem generis*. The statutory form of award, Form A, in the First Schedule to the Agricultural Holdings (England) Rules, 1923, uses as operative words, not only "I award *and determine* that . . ." but also "I determine the questions and differences . . ." and would thus be appropriate for a determination "that the rent properly payable for as from is (? will be) £ ."

But what then? It seems to me that Parliament, in carrying out the intention referred to by Lord Justice Scrutton, has not been very explicit. The statute does not provide that if the landlord refuses to reduce the rent the tenant may give notice to quit and yet claim compensation for disturbance. If he did, the landlord would be able to answer: "I did not refuse or fail to agree to arbitrate." But if the tenant demands a new tenancy at the rent "properly payable," can the landlord now say: "I certainly never clothed the arbitrator with any authority to make or accept offers on my behalf." Perhaps not, but one is driven to the conclusion that the effect of the legislation is, after all, to create a right to a new tenancy, though this is achieved in a roundabout way, being the joint effect of the right to demand arbitration "under this Act," of the provision that arbitration is the method of settling all differences under the Act, and of the provision that the result binds the parties. The further provision in sub-s. (4) of s. 12, which prevents recourse being had to arbitration as to rent more often than would effect changes at intervals of two years, is consistent with this object. And presumably, even if the party demanding arbitration were dissatisfied—or unsatisfied—with the result, he could still be compelled to enter into a new agreement; there is an obligation as well as a right. But I have arrived at this conclusion with some hesitation, for if an object is achieved by interfering with freedom of contract, one usually finds a clear expression of the restriction.

Mr. John White, solicitor, of Rosary-gardens, S.W., and Budge-row, left £16,403, with net personalty £16,318.

Our County Court Letter.

THE RIGHTS AND LIABILITIES OF DAIRY FARMERS.

The question of the warranty (if any) implied in the description of a cow as "right and straight" was recently considered at Loughborough County Court in *Kynock* v. *Draper*, in which the claim was for £29 18s. as damages for breach of warranty. The plaintiff's case was that, having bought the cow in December, he sold her in February for £6 1s. as her milk was foul and a veterinary surgeon considered that she was suffering from tuberculosis. The latter was not a notifiable kind, and the cow was, therefore, not taken before the authorities, as her udder was normal, although she was losing flesh. The defendant's case was that the cow was in good condition when sent to the market, but no definite guarantee was given. Corroborative evidence was given by the auctioneer's clerk, whose duty it would have been to make a note of any warranty, whether offered or asked for. His Honour Judge Haydon, K.C., observed that it would have been more satisfactory if the cow could be found and subjected to a tubercular test. Although the cow was apparently not right when sold, there was no imputation on the defendant's honesty, and the plaintiff had not discharged the onus of proof that a warranty was given. The case was an illustration of the difficulty of suing upon a verbal warranty, and judgment was accordingly given for the defendant, with costs. For an instance of a case on the other side of the line, see the note under the above title in our issue of the 17th May, 1930 (74 Sol. J. 315).

NAVIGATION WARNING AS ACT OF SALVAGE.

In the recent case of *s.s. Goldcrest* (*master, crew and owners*) v. *s.s. Sedgepool* (*owners*), in the Mayor's and City of London Court, the claim was for salvage services rendered off Foulness Buoy. The plaintiffs' case was that (1) the "Goldcrest," while on a voyage from Felixstowe to Middlesbrough on the 6th December, 1930, had sighted a vessel heading straight for the shore at 12.55 p.m. in foggy weather; (2) the international warning signal (the Morse letter "U") was then blown, meaning, "You are standing into danger"; (3) the other vessel thereupon reduced speed, reversed engines, turned almost a complete circle and headed E.S.E.; (4) the "Goldcrest" gave her position to the other vessel, which proceeded on a course S.E. by E.; (5) the other vessel was admittedly the "Sedgepool" (5,500 tons), her value being £28,000. The defendants denied that their vessel had been in need of assistance, as she had a wireless direction finder, and the visibility was better than alleged. Their master's evidence was that (1) being on a voyage from Middlesbrough to Rosario, he had set a course at the East Dudgeon Lightship, which should have brought the Foulness Buoy about 5 miles to starboard; (2) the currents must have brought his vessel near the buoy; (3) he had only ported, i.e., in the direction of the shore, because the "Goldcrest" had not given way, as she ought to have done. His Honour Judge Shewell Cooper observed that the "Sedgepool" had failed to give the usual signal, on porting, and the assessors had advised him that the circling was not the action of a vessel which knew her position. It was therefore held that the master had first discovered that he was out of his course on receiving the warning from the "Goldcrest," and judgment was therefore given for the plaintiffs for £100 and costs. Assistance by advice had previously been held to constitute a salvage service in *The Eliza* (1862), Lush. 536, and also in *The Eugenie* (1844), 3 Notes of Cases 430, where it was unsuccessfully argued that the services should only be remunerated as pilotage.

After completing 41 years' service with the Minehead Urban Council, Mr. W. H. A. Thorne, who is Clerk to the Council, has resigned. He was admitted a solicitor in 1920, and is a partner in the firm of Messrs. Newbery & Thorne, Solicitors, of Minehead.

Land and Estate Topics.

By J. A. MORAN.

THE auction sales that usually combine to emphasise the presence of the summer season are not very much in evidence. There is plenty of property in the market, but the fact is, the owners hesitate to incur the expenses of a public sale while the newspapers are full of gloomy foreboding of what is likely to happen in the near future. And all the time they ignore the commercial value of the auction, even if no sale is effected under the hammer, as an excellent advertisement.

The directors of the London Auction Mart report that in spite of adverse conditions the total realisations in Queen Victoria-street exceeded two and a quarter million pounds sterling, and the profits were sufficient to justify the declaration of a dividend of 4 per cent. This is very satisfactory, especially when one considers that business at the Mart is confined to members of the Auctioneers' and Estate Agents' Institution or the Surveyors' Institution.

The thirty-second annual provincial meeting of the Auctioneers' and Estate Agents' Institute, to be held at Bournemouth on Wednesday, Thursday, and Friday, next week, promises to be a great success. The popularity of these yearly gatherings is increasingly evident; they afford a welcome opportunity of combining business with pleasure, and of promoting the good fellowship that is so conducive to the success of an organisation of the kind. The Institute, which is rapidly approaching its Jubilee year, has a membership of 6,500.

Just now there may be a very good reason on the part of the mock auctioneer to keep away from Bournemouth, but, unfortunately, it is only too evident he means to patronise the Kentish resorts. He is no longer content to take a small lock-up shop; he watches for every opportunity to take over, for a short and profitable period, business premises that have just been vacated and in a rostrum of ornate proportions he disposes of his gilded wares to a credulous public. The trouble lies mainly in the fact that Governments which come and go look upon the licence duty as a mere source of revenue. Of course, it is open to people who believe they have been victimised to prosecute, but having been the victims of their own innocence they are not anxious to incur the ridicule of their friends, and, therefore, refrain from any action in the matter.

The austere auction advertisement appears to be suffering from the craze of dramatic publicity one usually associates with pill and soap manufacturers. The inclusion of a clear photograph of a property for sale may go a long way to assist inquiries, but when the illustration is confined to a crude drawing that one usually expects in a child's story book, one begins to wonder what is in the agent's mind. Naturally the picture attracts attention, but the relationship it bears to the house or lands is very difficult to trace.

Obituary.

SIR J. P. MIDDLETON.

Sir John Page Middleton, formerly Senior Puisne Judge in Ceylon, died recently at Southsea, at the age of eighty-one. Educated at Uppingham and Trinity Hall, Cambridge, he was called to the Bar by the Middle Temple in 1874, and went the Norfolk and South-Eastern Circuits. He went to the Gold Coast as Acting Queen's Advocate in 1882, and in 1883 he was appointed President of the District Court of Limassol, Cyprus. He acted as Judge of H.B.M.'s Consular Court at Constantinople in 1894, and from 1892 to 1902 he was Puisne Judge of Cyprus. He then became Puisne Judge of the Supreme Court, Ceylon, and eventually retired in 1912, in which year he had the honour of knighthood conferred upon him. After returning to England he became a J.P. for the West Riding and Liberty of Ripon.

MR. J. B. ASPINALL.

Mr. John Bridge Aspinall, the City Remembrancer, died at his home in Lincoln's Inn on Tuesday, the 21st June, at the age of fifty-four. The only son of Sir John Aspinall, and grandson of the late Mr. J. B. Aspinall, Q.C., Recorder of Liverpool, he was born in 1877, and was educated at Stonyhurst and Christ Church, Oxford. He was called to the Bar by the Middle Temple in 1903, and practised mainly before Parliamentary Committees. This experience aided him in his candidature for the office of City Remembrancer, to which, out of twenty-six candidates, he was elected in April, 1927. He was deeply interested in the ancient ceremonies of the City, and performed the duties of his office with success.

MR. T. W. S. BERRY.

Mr. Thomas William Seager Berry, solicitor, a partner in the firm of Messrs. Sherwood & Co., Parliamentary solicitors, of Westminster, died at his home at Stevenage, Herts, on Thursday, the 16th June, at the age of sixty-six. The eldest son of The Rev. T. B. Berry, of Stevenage, he was educated at Charterhouse, and having served his articles with Messrs. Hawkins, of Hitchin, where he won the Herts Law Society prize, he was admitted a solicitor in 1890. He joined the London County Council, and after being their Parliamentary officer, became solicitor to the Council in 1905. He left the Council in 1907 to become a partner in the firm of Messrs. Sherwood & Co., with whom he remained until the time of his death.

Reviews.

Establishment in England, being *Essays on Church and State*. By Sir LEWIS DIBDIN, D.C.L. (Hon. Durham), Dean of the Arches, and Honorary Fellow of St. John's College, Cambridge. 1932. Demy 8vo. pp. vii and (with Index) 185. London: Macmillan & Co., Ltd. 7s. 6d. net.

This volume is made up of eight chapters, which, with the exceptions of the first and third, have appeared before in various forms. As the learned author explains, "they do not present much inconsistency of view, but as forty-nine years lie between the first of these articles and the present time it could scarcely have been expected or desired that there should have been no change at all." The two chapters which are new deal with "the present outlook" and "the present relations of Church and State in England." In these two chapters the author sums up his views as to the present position and future outlook of the relations between Church and State, and the remainder of the book is mostly taken up by a general review of the subject on the historical side, and particularly with the proceedings and findings of the Royal Commission on Ecclesiastical Courts which reported in 1883. To the ecclesiastically minded lawyer the volume presents in convenient form much that is worth keeping in mind.

Banking and Currency. By ERNEST SYKES, B.A. (Oxon), Secretary of the Institute of Bankers. Seventh Edition, with a chapter on the Breakdown of the Gold Standard. 1932. Demy 8vo. pp. xiv and (with Index) 308. London: Butterworth & Co. (Publishers), Ltd. 5s. net.

This is the seventh edition of a work intended as a text-book for students and those who are reading for the examinations held by the Institute of Bankers, London Chamber of Commerce and other examining bodies. Since the last edition was published the world of banking generally has been concerned with the clearing up of the financial litter left by the war and with the effort to effect a general return to the gold standard. This has proved to be unsuccessful and culminated in the abandonment of the gold standard by Great Britain and a number of other countries. The most

interesting feature of this work is the chapter which deals fully with the causes of the breakdown and the future prospect of currency based on sterling.

The Law of Hire and Hire-Purchase. By A. A. Pereira, M.A., of the Inner Temple and South Eastern Circuit, Barrister-at-Law. 1932. Crown 8vo. pp. xxxvi and (with Index) 243. London: Butterworth & Co. (Publishers), Ltd. 15s. net.

This volume we are told is based upon the general scheme of the work of Mr. J. D. Cassels, K.C.—"The Law relating to Hire and Hire-Purchase"—and was originally intended to be a second edition of that work. Owing, however, to the lapse of time—over twenty years—since the first edition was published and the great extension in commercial circles of the use of hire-purchase, and the consequent multiplication of decisions dealing with the subject, it has been found necessary entirely to revise and re-write his treatise. In the course of doing this a great deal of the original work—well over one-half—has necessarily been deleted, over 400 fresh cases have been referred to, and the text has been more than doubled. Fresh chapters have been added dealing with the important subjects of Fixtures, Assignment and Civil Proceedings, and the Precedents in the Appendix are new. Accordingly it may be regarded as practically a new work, and we share the author's hope that it will be of use not only to practitioners but also to the many thousands of laymen who are to-day interested in this subject. The case law includes all relevant cases decided up to the end of 1931. There is an excellent index and an appendix of precedents, which will be found to be of service to the practitioner.

Powers of Attorney, being a Manual of Law and Practice. Third Edition. 1932. Demy 8vo. pp. viii and (with Index) 116. Cambridge: W. Heffer & Sons, Ltd. 5s. net.

This useful manual is issued by the Council of the Chartered Institute of Secretaries, and the present edition has been revised and brought up to date. It embodies a complete exposition of the law on the subject and contains a number of appendices which set out a useful series of precedents of standard clauses and other forms, together with the Rules of Court relating to filing and the relevant sections of the Law of Property Act, 1925, and the Trustee Act, 1925. There is also a valuable appendix setting out the essential extracts from leading cases which in the present edition has been enlarged by the inclusion of recent judgments. The volume bears evidence of having been carefully revised, and we have no doubt that it will enjoy a wide circulation not only amongst those for whom it is primarily intended, but also among legal practitioners.

The Law of the Sale of Goods. By C. G. Austin, B.A. (Oxon), of Gray's Inn, Barrister-at-Law. 1932. Demy 8vo. pp. xiii and (with Index) 158. London: Sir Isaac Pitman & Sons, Ltd. 5s. net.

Many are the books that have been written by way of exposition of the law relating to the sale of goods since the Statute of 1893 was given to the world by the late Sir Mackenzie Chalmers. The object of the present author in adding to the number of these books has been to set out in simple form, and so far as is possible in non-technical language, especially for students and business men, the general principles of the law, and to illustrate these principles by reference to appropriate decided cases. The author's experience as an examiner in mercantile law to the Chartered Institute of Secretaries has enabled him to select for particular emphasis those principles which he knows to be of special difficulty for the student. The volume embodies not only a series of chapters dealing with the different departments of the law, but also contains an appendix of useful notes and problems for the assistance of students. It contains also the text of the Sale of Goods Act, 1893, and the Factors Act, 1899, and these are made easily accessible by a well-arranged and accurate index.

The Articled Clerks' Cram Book. By W. S. Chaney, Solicitor (John Mackrell Prizeman). Demy 8vo. pp. (with Index) 794. 1932. London: Sweet & Maxwell, Limited. 17s. 6d. net.

This book, which is intended to be used in conjunction with the usual text-books, should prove very helpful to students and should save them a great deal of time usually spent in the laborious task of taking notes. It covers the ground necessary for the Solicitors' Final and Honours Examinations, and although its compilation must have been a difficult undertaking it has, on the whole, been very well accomplished. Spaces have been left throughout the book to enable the student to add notes of his own where necessary, and with these the volume should form a complete book for revision purposes before the examination. It should, we think, prove of considerable assistance to those for whom it is intended.

The Stock Exchange Official Intelligence, 1932. Vol. L. Demy 4to. pp. clxxii and 2015. London: Spottiswoode, Ballantyne & Co., Limited. 60s. net.

We have recently received the 1932 edition of the above work, which is a carefully revised précis of information regarding British, Indian, Dominion, Colonial, American and foreign securities, and is edited by the secretary of the Share and Loan Department of the Stock Exchange. This volume, which is the fiftieth of the series and has apparently been compiled with the customary amount of care and diligence, contains particulars of seventy-nine new companies and of sixteen new loans raised during the past year. A new feature which appears in this issue is a list of members of the Associated Stock Exchanges, and there is also a special chapter devoted to a review of the principal decisions of the courts during 1931 on points arising under the Companies Acts.

Books Received.

Copyright Cases, 1930-31. By E. J. MacGillivray, LL.B. (Cantab.) and W. B. McConnell, of the Inner Temple, Barristers-at-Law. 1932. Demy 8vo. pp. ix and 88. London: The Publishers' Association. 9s. net.

Principles of Company Law. By J. Charlesworth, LL.D., of Lincoln's Inn, Barrister-at-Law. 1932. Demy 8vo. pp. xlviii and (with Index) 306. London: Stevens & Sons, Ltd.; Sweet & Maxwell, Ltd. 7s. 6d. net.

The New English Weekly. A Review of Public Affairs, Literature and The Arts. Vol. I. No. 9. June 16. London: The New English Weekly, 38, Cursitor-street, E.C.4. 6d. per copy. Subscription: 30s. per annum.

The Workmen's Compensation Acts, 1925 *to* 1931. By W. Addington Willis, C.B.E., LL.B., of the Inner Temple, and the North-Eastern Circuit, Barrister-at-Law, Deputy Crown Umpire of Unemployment Insurance. Twenty-eighth Edition. 1932. Crown 8vo. pp. cxxvii and (with Index) 917. London: Butterworth & Co. (Publishers), Ltd.; Shaw & Sons, Ltd. 17s. 6d. net.

The Lawyer and Banker and Central Law Journal. Vol. XXV. No. 3. May-June. New Orleans: The Lawyers' and Banker's Co. 75 cents per copy. Subscription: $4.00 per annum.

The Victorian Law Journal. Vol. I. No. 5. May. Melbourne: Pickwick Publishers Pty., Ltd. Subscription: £1 1s. per annum.

Journal of Comparative Legislation and International Law. Edited by F. P. Walton, LL.D., K.C. (Quebec). Third Series. Vol. XIV. Part II. London: Society of Comparative Legislation. Subscription: £1 1s. per annum.

[All books acknowledged or reviewed can be obtained through The Solicitors' Law Stationery Society, Limited, London and Liverpool.]

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, is responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Cestui que **Trust giving Guarantee to Bankers** WITH NOTICE OF THE RELATIONSHIP TO SECURE THE TRUSTEES' ACCOUNT—UNDUE INFLUENCE—POSITION OF BANK.

Q. 2499. In 1905 testatrix died bequeathing to her trustees, her two sons D and W, her leasehold dwelling-house upon trust for sale, and to pay the income to her daughter M for life, and after her death in trust to divide the said trust fund equally among all the children of her said daughter M. In 1925 the two trustees, who were pursuing a small commercial venture, induced their sister M to sign a memorandum of charge of the lease of the trust property to their bankers guaranteeing account of this venture. Now that the venture has failed the bank want M to pay rent for the rest of her life. She has no other assets. Can the bank, who must be taken to have notice of the trust, enforce a security given by a *cestui que* trust to guarantee the account of trustees, or does this knowledge of the relationship between guarantor and debtors, which they must be taken to have had at the time, prevent them taking advantage of their security? It seems clear that the actual lease should certainly not be in their possession, but in the possession of the personal representatives of the survivor of the deceased's trustees. The deceased trustees left no estate.

A. We express the opinion that the bank can enforce their security if they can show that the lady had proper professional assistance in the matter of the guarantee. As it is the usual practice of the large banks to insist that a guarantor shall have independent advice, the bank in this case will probably be in a position to show this. It was laid down many years ago that a *cestui que* trust could not confer a benefit on his trustee (*Vaughton* v. *Noble*, 30 B. 39); and in the general case a third party could not take except subject to the taint of undue influence, even if without notice of the relationship (*Bridgman* v. *Green*, Wilm. 58, 64); but this latter principle does not apply to ordinary business transactions if *bonâ fide* (*Blackie* v. *Clarke*, 15 B. 395). It would seem that the only duty of a creditor in such a case is to see that the *cestui que* trust had proper professional assistance, and that the mere fact that a relationship exists in which undue influence was possible does not amount to notice that the security can only be obtained by undue influence (*Corbett* v. *Brock*, 20 B. 524). We would add that the position is one of very considerable difficulty, and we would suggest attempting some compromise with the bank, who, in view of the circumstances, may be disposed to release the lady on fairly easy terms.

Husband and Wife—JOINT INVESTMENTS—ESTATE DUTY.

Q. 2500. A died recently, and his estate consisted almost entirely of leasehold property, moneys and investments, all in the joint names of his wife and himself. The whole property was provided out of moneys earned by A. The last investment, however, was made a little over three years prior to death. A made his will and left everything he possessed to his wife absolutely. Probate has been granted and duty has been paid on half the value of the joint investments. The estate duty authorities now contend that duty must be paid on the other half. In view of the fact that the whole of the investments were made more than three years prior to death, can the claim for duty be successfully resisted? I shall be glad of any authority.

A. The claim appears to be justified. See Finance Act, 1894, s. 2 (1) (*c*), which incorporates with amendments s. 38 of the Customs and Inland Revenue Act, 1881, and s. 11 of the Customs and Inland Revenue Act, 1889, and note the words "or some part thereof." We gather from our subscriber's query that no corresponding claim has been made in the case of the leaseholds. This is in accordance with what we believe is the practice of the Revenue, though it is difficult to see why there should be a difference in the treatment of the two classes of property.

Tenancy of Paddock.

Q. 2501. A landlord recently demised to a tenant a dwelling-house and about half an acre of garden ground for a term of years. The same tenant now wishes to hire from the landlord a two-acre paddock in rear of the demised premises, the hiring to be a yearly one, subject to three calendar months' notice to quit expiring on the anniversary of the hiring, at a rental of a few pounds a year. Having regard to the Agricultural Holdings Act, 1923, how can the suggested arrangement be carried out and the terms embodied in an additional tenancy agreement? The proposal is that the paddock shall be used for keeping poultry and ducks but not as a market garden or for grazing animals.

A. The Agricultural Holdings Act, 1923, s. 57 (1), defines a contract of tenancy (for the purposes of the Act) as a letting (*inter alia*) from year to year. A tenancy of less duration than from year to year is, therefore, not within the Act, and the hiring of the paddock should, therefore, be for fifty-one weeks, subject to three calendar months' notice to quit expiring at the end of the first or any subsequent period of fifty-one weeks from the date of commencement.

Assent by Personal Representatives TO A PURCHASER FROM THEM—LEGALITY—STAMP.

Q. 2502. By s. 36 of the A.E.A., 1925, a personal representative may assent to the vesting in any person who (whether by devise, bequest, devolution, *or otherwise*) may be entitled thereto of any estate or interest in real estate, and such assent shall operate to vest in that person the estate. Further, such assent, in the absence of notice of a previous assent, shall be taken as sufficient evidence that the person in whose favour the assent is given is the person entitled to have the legal estate conveyed to him. By sub-s. (11) the section shall not operate to impose any stamp duty in respect of an assent. Bearing in mind these provisions, can you inform us what objection there is to a conveyance of the fee simple in property which a personal representative has agreed to sell under his power of sale to a purchaser for value being carried out by such an assent instead of by a conveyance by deed, and would this evade the payment by the purchaser of *ad valorem* stamp duty?

A. This is a matter of considerable controversy. Against the suggestion it can be urged, and with great force in the opinion of the writer, that the words "or otherwise" in A.E.A., 1925, s. 36 (1), are, in construction, subject to the *ejusdem generis* rule, and that a sale is not of the same type of transaction or event as a "devise, bequest, or devolution." Further, it is to be observed that A.E.A., 1925, s. 36 (7), only renders an assent in certain circumstances "sufficient" (and not *conclusive*) evidence in favour of a "purchaser," that is

to say, a person who in good faith acquires an interest in property for valuable consideration: A.E.A., 1925, s. 55 (1) (xviii). On the question of stamp, it is by no means clear that, in view of the very wide definition of "conveyance on sale" contained in s. 54 of the Stamp Act, 1891, the assent would not attract *ad valorem* duty, notwithstanding A.E.A., 1925, s. 36 (11). On another view, it might be suggested that the true effect of a contract for sale by a personal representative providing for an assurance to a purchaser by way of an assent was an agreement to sell an equity, followed by an assent, which might bring s. 59 of the Stamp Act, 1891, into play. In view of these difficulties it would be a bold practitioner who was prepared to effect a sale in the way suggested. For a contrary view as to the possibility of such an assent, see "Emmet" ("Notes on Perusing Titles"), 12th ed., vol. I, pp. 255 and 256. On p. 256 of that work attention is drawn to the fact that it is stated in "Wolstenholme and Cherry's Conveyancing Statutes," vol. II, p. 531, that "where the representatives are themselves making title to a purchaser . . . the appropriate form of conveyance (not an assent) must be used."

Separation Order—Effect of.

Q. 2503. A deserted his wife, who made an application under the Summary Jurisdiction Acts and the justices ordered that the wife be no longer bound to cohabit with A. The order was dated January, 1927. He committed suicide in 1930. All the assets left by him were acquired subsequent to the justices' order. We are informed the mother (who is incidentally also a creditor of the deceased) and father can obtain a grant of letters of administration, testator having died intestate. Will you please state:—

(1) Under what authority such a grant can be obtained.

(2) On whom the property beneficially devolves and the authority for this.

A. (1) We do not think that there is any justification for the suggestion. An order by a magistrate that a married woman is no longer bound to cohabit with her husband has the effect of a decree of judicial separation: Summary Jurisdiction (Married Women) Act, 1895, s. 5; Licensing Act, 1902, s. 5 (2). There is no provision relative to the property of the husband equivalent to s. 194 of the Judicature Act, 1925. The wife is, therefore, in our opinion, entitled to the grant.

(2) In our opinion there is nothing to disturb the normal devolution of the deceased's property under the A.E.A., 1925. We are not in possession of sufficient information to be able to set out the exact devolution. The suicide has no adverse effect: Forfeiture Act, 1870.

Nationality—Domicile—Testamentary Capacity.

Q. 2504. An English lady was married to an Irishman who was domiciled in that part of Ireland which is now Northern Ireland. He died before the war, and for many years she has been living in England. She wishes to be advised whether her nationality or status as an English subject is now affected by her marriage. If she makes a will, is her power to do so, or the form of it, or the law under which it would operate, affected in any way by her previous domicile? Would it affect death duties? What is her present domicile? What is her present nationality? She is permanently resident in England and intends to remain so. How would the position be affected if her husband had been domiciled in that part of Ireland which is now the Irish Free State? Her husband lived near the frontier, and we are unable to ascertain exactly the line of frontier, but we believe that the place of his residence was Northern Ireland.

A. It will be appreciated that a query of this nature covers a large field, and that the answer may vary from facts and circumstances with which we are not acquainted. Subject to this prefatory remark, we give the following replies:—

(*a*) The nationality of the lady is (and always has been) British, seeing that both she and her husband were natural born British subjects.

(*b*) She appears to have acquired an English domicile as her residence in England is voluntary and *animo manendi*.

(*c*) Her testamentary power is not affected by her previous domicile. As to a will of land, the law of the site of the land is the material factor. As to pure personalty it is the law of the domicile at the date of death which is in point.

(*d*) If the husband had been domiciled in the Free State area, the position would not have been affected thereby. He would none the less have been a British subject. At present a person being a Southern Irishman is a British subject, though his future status is possibly likely to be altered.

(*e*) We do not see that any question of death duties can be affected by the former domicile of the lady.

Mandate to Bank by Three Executors to honour signatures of Two—Position of Executors and of Bank.

Q. 2505. A banking account was opened about five years ago by three executors under the title of "A, B and C, Executors of D, deceased." The bank was authorised in writing to pay cheques signed by any two of the executors, and this has been the practice adopted ever since. Now an inspector of the bank informs the manager that the authority should not have been accepted and the three executors should have signed all cheques. The inspector further states that after five years it must be assumed the executors are no longer executors but trustees of D's estate, and that trustees cannot delegate their duties. Is the contention of the bank inspector correct?

A. From the point of view of the executors, we express the opinion that the mandate was irregular and not justified by any necessity, and thus in the nature of a breach of trust. The principle appears to be that "if one executor does an act *unnecessarily*, which enables his co-executor to obtain sole possession of property belonging to the testator's estate, which, but for that act, he could not have obtained possession of, the executor doing such an act will be liable for any loss that occurs from the misapplication of such property by his co-executor" (White and Tudor's "Leading Cases in Equity," 8th ed., vol. II, p. 674). There does not appear to have been any necessity for the special form of mandate, which was, we take it, merely given to obviate the necessity of obtaining three signatures to every cheque, etc. From the point of view of the bank, we express the opinion that as the bank had notice of the irregularity, and would not have the proper discharge of all the executors for each payment, it would be liable in the case of any misapplication. The foregoing remarks are intended to be confined to the position during the subsistence of the executorship. On the commencement of the trusteeship the position would be aggravated so far as the trustees are concerned, as they have no power of delegation and no question of joint and several authority arises. As to the bank, it is considered that it is not concerned to inquire as to the progress of the administration of the estate, and its position would be the same as if the executorship had in fact continued. The position of a bank would be very difficult if it was under any duty to ascertain changes in the fiduciary capacity of its customers, with which it is not, in most cases, in any way concerned.

Trust for Sale—One Trustee Bankrupt—Sale—Position.

Q. 2506. In 1932 freeholds were conveyed to A and B (husband and wife) in fee simple. The purchase money is expressed to be paid out of moneys belonging to them on a joint account. In 1927 A and B deposited the deeds with a bank as security for an overdraft of A, and signed a memorandum of deposit (not under seal). A has now been adjudicated bankrupt. It is now desired to sell the property. There is more owing to the bank than the property is likely

to fetch. Are A and B still trustees for sale and can they and the bank convey so as to confer a good title on the purchaser?

A. Yes. Only the equitable interest of A in the equity of redemption has been caught by the bankruptcy, and while his bankruptcy renders him "unfit" to act as a trustee (*Re Roche* (1842), 2 Dr. & War. 287), it does not *ipso facto* cause him to cease to be a trustee. It is, however, inadvisable for B to have a bankrupt co-trustee, and, in view of this fact and the possibility of the purchaser raising objections, it would be advisable for her to make an appointment in his place before the sale.

Rent Restriction Acts—Service Tenancy.

Q. 2507. A client of ours is the owner of two cottages, both of which are occupied by farm labourers. These two men were in our client's employ, and their services were terminated by notice on the 18th March last, and up to that date the occupiers were service tenants. Our client has now sold one of the cottages and decided to retain the other, and both our client and the purchaser intend to keep the former occupiers of the cottages on at a rental. The point arises both from the point of view of the purchaser and our client, as to whether in view of the occupiers being service tenants up to the 18th March last for a period of about twenty years the cottages now come within the Rent Acts, and whether it is possible to make the occupiers de-controlled tenants by their entering into an agreement with the landlords. Both the occupiers of the cottages have had their position explained to them and are both prepared to enter into any agreement in order that they may stay on in their cottage for the time being.

A. A cottage is within the Acts even though the tenancy is what is commonly called a service tenancy. The only difference is that alternative accommodation need not be offered, see para. (i) at end of s. 5 (1) of Act of 1920. If the occupier had been required to occupy the cottage without rent as a condition of his service, then there would be no tenancy, and he could be turned out and the landlord could take actual possession and de-control the cottage. Under the circumstances mentioned it is not possible to de-control.

Pawnbroker's Liability for Burglary.

Q. 2508. A makes a pledge with B, a pawnbroker, under a special contract for six months. The pledge is under £20. Before the period stipulated by the contract expires, B's premises are broken into and A's articles which have been pledged by him are stolen. B communicates with A to inform him of the position, but before the six months expires, A, as a matter of course, attends upon B to redeem the pledge in accordance with contract, but is informed, as already communicated to him, that the goods have been stolen. What rights has A against B in the matter? B denies liability, as he states that every care was exercised as the goods were placed in his strong room on the night of the burglary.

A. The pledge is apparently over £10 and outside the scope of the Pawnbrokers Act, 1872. Under the ordinary law of bailment, the pawnbroker is answerable for ordinary neglect, and is not liable on account of the pledge having been stolen—if he can show that he used due care to protect it. This was laid down in *Coggs* v. *Bernard* (1704), 2 Ld. Raymond 917. A's claim must therefore depend on proof of negligence, and it should be ascertained whether, for example, the pledge was left in a lock-up shop overnight. This was held to be evidence of negligence in *Shackell* v. *West* (1859), 2 E. & E. 326, but the decision depended upon the facts, and is not in consonance with modern conditions. Inquiries should be made as to whether (*a*) a burglar alarm was fitted, (*b*) a light was shining on the safe all night, (*c*) a watchman was employed, or (*d*) there was a spy-hole in the front blind for the police to observe the interior of the premises. If B can establish the facts, upon which he relies, A will therefore have no remedy.

In Lighter Vein.

The Week's Anniversary.

Sir William Alexander was over eighty when he died on the 29th June, 1842, after a life which, in some respects, was more successful than he could have expected. At the end of twenty years' practice at the Chancery Bar, he felt justified in taking silk. A few years later, Lord Eldon offered him an appointment as a Master in Chancery. This comparatively subordinate office he accepted, filling it for fifteen years, until the Lord Chancellor called him forth to take his place at the head of the Court of Exchequer. The profession was not more suprised than the new Chief Baron, nor were its misgivings greater than his. Nevertheless, the event justified the choice, and for seven years Alexander filled his place most usefully. In 1831, however, he was induced to vacate it because Lord Lyndhurst, having resigned the Great Seal, required fresh judicial employment. As a sort of consolation prize to the retiring judge, Providence arranged that about this time iron ore should be discovered beneath his estate at Airdrie. Thus, the remaining twenty years of his life were amply provided for.

Unofficial Jokes.

It is well that the Bench did not take too seriously the indiscreet practical joke which recently brought a young barrister into that part of the police-court not usually occupied by the Bar. Even judges have been known to be led astray by a misguided sense of humour. Mr. Justice Field, for instance, while travelling with Mr. Baron Pollock, was guilty of one of the most surprising acts of mature irresponsibility. Having surreptitiously got possession of his brother judge's railway ticket, he confided to the guard of the train that "the old gentleman in the corner" was trying to defraud the company. His delight knew no bounds when his learned colleague was required to produce his ticket and found himself unable to do so. But Pollock, B., was not amused.

Belief in Witchcraft.

Lord Justice Lawrence's observation, during the hearing of the Morris appeal, that "in the old days people honestly believed that they were witches" is clearly borne out by a very great number of confessions not exacted by torture which occur in the reports of seventeenth century witchcraft cases. Isobell Gowdie, for instance, tried in Scotland in 1662, gave the court full and detailed accounts of meetings and compacts with the devil, flying through the air, seeing the King and Queen of the Fairies, and going to diabolical revels in the guise of a jackdaw. To this she added a specific list of murders committed with arrow-heads shaped by the devil. Still more strange is the fact that the other accused corroborated her.

Other Uses for Books.

When Mr. Justice Swift recently confiscated a Testament which was being employed to demonstrate a traffic problem, he took the course once adopted by the eminently religious Phillimore, J., when a witness emphasised his evidence by banging the book on the ledge of the witness-box. "Nearly everyone," said Swift, J., "who comes into the box uses the Testament to represent something, sometimes a tramcar and sometimes an omnibus." All books brought into a court of law are liable to be pressed into some such service. While he was at the Bar, the late Mr. Justice Alpers, of New Zealand, once had a running-down case in which his opponent overwhelmed the court with citations. Alpers had no cases, but he commandeered all his adversary's books to build a plan of the scene of the accident. He won on his demonstration.

The Trials of Jurors.

The complaint which the jurors in waiting recently laid before Mr. Justice Swift and his reply thereto aired a grievance which is probably as old as the jury system. Nowadays, judges do all they can to alleviate the inconvenience, but it

was not always so. Mr. Baron Smith, of the Irish Exchequer, for instance, had a great opinion of the dignity of the Bench and the respect due from jurors, even when, as happened at one assize at which he presided, an ex-judge, formerly Mr. Justice Day (not the famous English judge but another), was foreman of the grand jury. Late in the evening when they thought their services were no longer needed, they went to dine with the High Sheriff. No sooner did Mr. Baron Smith realise their absence than he ordered them to be called back immediately. The ex-judge was the first to rise from table, expressing his anxiety to show respect for the judicial office which he had himself held. The jury rushed back to court, scrambled into the box and waited for his lordship's commands. "Gentlemen," he said politely, "I dismiss you for the night."

Correspondence.

False Statements in Declarations under Unemployment Insurance Act."

Sir,—The paragraph under the above heading in your issue of 4th June does not seem to me to set forth the law correctly.

The statement that "dependant's benefit may be claimed for a wife if there is only one lodger living with the family however large the amount paid" is misleading, as where the weekly sum paid by a boarder is large, a question arises whether the scale of board and accommodation provided is the same for the boarder as for the members of the family; and if not, the condition of the boarder's being provided with board and accommodation "as a member of the family" would not be complied with (Umpire's Decision 5019/30).

The assertion that "if there are two or more lodgers, dependant's benefit is not payable however small their weekly contribution may be" is too wide. Section 2 (2) (*g*) of the Unemployment Insurance Act, 1930, does not so stipulate

While a strong presumption arises of the claimant's wife being engaged in an occupation if she takes more than one boarder, the presumption may be rebutted, e.g. where the amounts charged are so small that it cannot be contemplated that any person engaged in the occupation of taking lodgers or boarders for profit would make such low charges (Umpire's Decision 1138/28).

Ilkeston. F. G. Robinson.
7th June.

[It is agreed that the statement of the law in the above-mentioned paragraph is subject (like all concise generalisations) to certain exceptions. The umpire's decisions quoted by our correspondent, however, are merely two (out of a large number) set out in the Analytical Guide to Decisions, U.I. Code 7 (1930), pp. 190 to 193, and in the Supplement No. 1 to U.I. Code 7 (1932), pp. 37 to 41. These are too lengthy to set out here, but those interested may obtain the above publications (through any bookseller) from H.M. Stationery Office, at the price of 1s. net.—Ed., *Sol. J.*]

Registration of Business Names.

Sir,—We should like to call your attention to an obvious defect in the particulars required for the registration of business names under the Registration of Business Names Act, 1916.

We have been concerned in several cases in which we have sued a firm only to be met with a defence that the proprietor of the firm is an infant and is therefore not liable.

If this information as to infancy had been disclosed at the time of registration, credit would not have been given.

It certainly seems to us that steps should be taken to have the particulars amended so that persons who are infants have to disclose the fact.

We have more than once called the attention of the Registrar to this defect, and we suggest that other firms of solicitors whose clients have suffered should put their point of view before the Registrar and endeavour to get this obvious defect in the registration particulars put right in the future.

London, E.C.2. Cochrane & Cripwell.
14th June.

Insurances on Mortgaged Property.

Sir,—With reference to the articles which have appeared in your issues of the 4th and 11th instant upon this subject, which I have read with great interest as I have lately been called upon to advise upon the point, I do not understand why your contributor is of opinion that the danger revealed by *Halifax Building Society* v. *Keighley* exists in the cases of the insurance by tenants and purchasers of mortgaged property for their own protection, and, if he deals further with the matter, perhaps he will kindly elaborate his views in this connexion. Duplication of insurances on mortgaged property effected by or on behalf of the principals to the mortgage must, I fancy, be relatively rare, as a mortgagor is not generally anxious to expend more directly or indirectly in the way of insurance than the irreducible minimum, but insurances of mortgaged property by tenants and purchasers must, and especially the latter class, be very numerous.

If I am right in thinking that the common form clause in fire policies only applies to duplication of insurance "by or on behalf of the insured," then, surely, there is no danger in the case of an insurance by a tenant in his own name and not under any covenant in his contract of tenancy, or by a purchaser in his own name, for neither of these insurances would be effected "by or on behalf of the insured" (the mortgagor or mortgagee).

A clause designed to minimise or avoid the danger revealed by this case will be found on p. lxxiv of the Addenda et Corrigenda to Vol. I of the current (12th) edition of Emmet's "Notes on Perusing Titles." The clause constitutes an agreement by the mortgagor not to insure the property himself, and a declaration that if, in breach of that agreement, he does insure and receive any policy money, he will hold it on trust for the mortgagee and will hand it over on demand for application in or towards the discharge of the mortgage debt.

Swanage, John P. H. Cookson.
14th June.

Notes of Cases.

House of Lords.

Toogood & Sons Limited *v.* Green.

13th May.

Rates—De-rating—Industrial Hereditament Seed Warehouse and Offices—Seed Cleaning and Sorting—Retail Shop—Rating and Valuation (Apportionment) Act, 1928, s. 3, sub-ss. (1), (4).

This was an appeal from the Court of Appeal and raised the question whether the appellants' hereditament situated near Southampton was an industrial hereditament so as to entitle it to be placed on a special list for de-rating purposes or was primarily used as a retail shop within s. 3 of the Act.

The appellants on the hereditament in question carried on the business of retail seedsmen. Seeds were cleaned, tested, sorted and then sold to customers. A small quantity was sent to a retail shop of the appellants in Southampton, but as to the remainder, orders were received by the appellant at their office on the hereditament. The hereditament consisted of a warehouse, a smaller warehouse, a block of offices, a store-room and a wooden hut. The warehouse was used for cleansing

operations and the other buildings were admittedly used for other than industrial purposes. The hereditament was a factory within the Factory Acts. An agreed statement showed that the offices were modern clerical offices with no physical features of an ordinary retail shop, and that the seeds were sold in nearly equal proportions to trade customers and to customers other than the trade.

Lord THANKERTON, in delivering a judgment, which was said to be the judgment of the House, said the present case might be taken as one in which the appellants sold only goods which were manufactured by themselves and in premises which had no accommodation adapted for the purpose of the physical resort of customers. The orders for goods were almost entirely obtained outside the hereditament, but they were dealt with on the hereditament. While it might be a question whether market gardeners were retail customers or not, it was common ground that at least half of the amount sold was sold to retail customers. The test was what was done on the hereditament irrespective of what was done outside, and whether the hereditament was mainly used for the purposes of a retail business or for the purposes of a retail shop. It was to be noted that of 1,882 tons of seed disposed of, 1,160 tons were sold by travellers and agents and the rest on orders by letters. He (Lord Thankerton) was clearly of opinion that this hereditament was not used and occupied to any material extent for the purpose of a retail shop, including any premises of a similar character where retail trade or business (including repair work) was carried on, and that it was an industrial hereditament within the meaning of s. 3. But that did not preclude any question under s. 4. Accordingly he was of opinion that the order of the Court of Appeal should be reversed, that the order of the King's Bench Division be restored, and that appellants should have their costs here and in the Court of Appeal.

COUNSEL: *Singleton*, K.C., *Pritt*, K.C., *and Charles L. Henderson; the Attorney-General* (Sir T. Inskip, K.C.), and *Wilfrid Lewis*.

SOLICITORS: *Herbert Smith; Treasury Solicitor.*

[Reported by S. E. WILLIAMS, Esq., Barrister-at-Law.]

Court of Appeal.

In re Blanchard: Blanchard *v.* Blanchard.

Lord Hanworth, M.R., Lawrence and Romer, L.JJ. 27th May.

HUSBAND AND WIFE—JUDICIAL SEPARATION—ALIMONY—FAILURE TO PAY SUM ORDERED BY DIVORCE DIVISION—APPLICATION TO CHANCERY DIVISION FOR COMMITTAL—ORDER MADE FOR PAYMENT OF CERTAIN ARREARS—DISCRETION.

In January, 1926, a wife obtained a decree of judicial separation, and in July, 1926, the husband, who was stated to be earning about £10 a week, was ordered to pay £5 a week for her support and that of two children of the marriage. He paid certain sums in the neighbourhood of £3 a week, but gradually fell into arrears. Various judgment summonses were taken out, but by 18th April, 1932, about £403 was owing. The wife applied in the Chancery Division for an order to commit him for non-payment. Clauson, J., declined to make the order. He said that when the Legislature passed the Debtors Act, 1869, it had taken away the jurisdiction of the Divorce Court to enforce orders by committal. He wished to make it clear that the Chancery Court did not directly enforce the orders of the Divorce Court. The anomaly could only be removed by an Act of Parliament, and he hoped that, in the interests of justice, that change in the law would be made. In his view he could only deal with the arrears incurred, and he made an order for payment of £3 a week in respect of £252 arrears incurred from April, 1931, to April, 1932. The order of the Divorce Division to pay £5 a week still continued in force. The wife appealed. The court dismissed the appeal.

Lord HANWORTH, M.R., said that the matter really lay within the discretion of Clauson, J., and as he had rightly directed himself the court would be very loth to interfere with his ruling. It was sought to commit the respondent under s. 5 of the Imprisonment for Debt Act, 1869, but in the case of *The Queen* v. *The Judge of the Brompton County Court* (1886), 18 Q.B.D. 213, Lord Esher said (at p. 217): "When the summons came on to be heard before the judge, if he was satisfied that the debtor had means, and that he was defying the courts and the law, he might make an order for his immediate committal; I have known such orders made. But, instead of making an order for committal, the judge might make a substituted order for payment of the debt by instalments; and this, the power to make which seemed obviously given by s. 5 of the Act, was frequently made at chambers without the consent of the parties." Although, as Lord Esher said, in exceptional cases there might be an order for committal at once, yet that was not the practice nor the rightful practice. Lord Esher's view clearly was that an order for committal should only be made in exceptional cases. If the order made in Chancery were not complied with, then the appellant might have a right to come to the court for an order for committal; but he (Lord Hanworth) agreed with Clauson, J., that it would be better if some change in the law were made, so as to enable the Divorce Court to enforce its own orders, and not to be obliged to leave those matters to another court.

COUNSEL: *J. Bowen Davies*, K.C., and *Patrick Spicer*, for the appellant; *Victor Russell*, for the respondent.

SOLICITORS: *Cedric Akaster; Maples, Teesdale & Co.*, for *Benning & Hoare*, Dunstable.

[Reported by G. T. WHITFIELD-HAYES, Esq., Barrister-at-Law.]

High Court—Chancery Division.

In re Joicey: Thompson *v.* Duncan.

Eve, J. 7th June.

POWER OF APPOINTMENT—GENERAL POWER—CONSENT OF TRUSTEES—DUTY IN EXERCISE OF POWER.

This was a summons raising questions as to the exercise of a power of appointment. Under the will of Mrs. Mary Joicey, her son, the late James John Joicey, was entitled to a protected life interest in the residue of her estate with remainder on trust for his issue; and the testatrix directed that in the event (which happened) of J. J. Joicey dying without leaving issue living at his death, her residuary estate was to be held in trust for such persons, for such estates and in such manner as her son should appoint, and in default of appointment in trust for such charity as her trustees should appoint, provided that no such appointment should take effect unless either before her son's death or within three months afterwards the trustees consented to such appointment. The testatrix died in January, 1930, and J. J. Joicey, by his will, in exercise of the power of appointment, appointed that a valuable collection of butterflies and moths part of his mother's residuary estate should go to the British Museum. J. J. Joicey died on 10th March, 1932. The trustees had not yet consented to the appointment taking effect, and they issued this summons to have it determined whether on the true construction of the will and in the events which had happened, they could effectively sever their consent so as to give their consent to the appointment in favour of the British Museum, but to withhold it in respect of the appointment to the residuary appointee.

EVE, J., in the course of his judgment, said in the view which he took of the construction of the will of Mrs. Joicey, her trustees had no discretion as to selecting the persons who were to take under the exercise of the power. It was a general power not subject to the approval of the trustees as to its exercise. The word "such" could not be taken as referring to one or more of several appointments. The

present case appeared to be entirely covered by the two authorities of *In re Dilke* [1921] 1 Ch. 34, and *In re Phillips* [1931] 1 Ch. 347, to which reference had been made.

COUNSEL: *Harold Christie; Howard Wright; Vanneck; J. R. Perceval Maxwell; Stafford Crossman.*

SOLICITORS: *Crossman, Block & Co.*, for *Dees & Thompson*, Newcastle-on-Tyne; *Mason & Co.; Warrens; Treasury Solicitor.*

[Reported by S. E. WILLIAMS, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Thomas Merthyr Colliery Co. Ltd. *v.* Davis (Inspector of Taxes). Finlay, J. 25th May.

REVENUE—INCOME TAX—SUBSCRIPTION TO COAL OWNERS' ASSOCIATION—DEDUCTION IN ARRIVING AT PROFITS—EXPENSE OF BUSINESS.

This was an appeal by Thomas Merthyr Colliery Co., Ltd., by a case stated by the Commissioners for the Special Purposes of the Income Tax Acts.

The question was whether in computing the assessable profits of the Thomas Merthyr Colliery Co., Ltd., the sums of £312 for the year 1928-29, and £59 for the year 1929-30, which were sums paid by that company by way of subscriptions to the Monmouth and South Wales Coal Owners' Association, were proper deductions. The Special Commissioners held that a similar question came before the court in 1896 in the *Rhymney Iron Co., Ltd.* v. *Fowler* [1896] 2 Q.B. 79; 44 W.R. 651; when it was held that the contributions were not admissible deductions in arriving at the profits assessable. The Commissioners were satisfied on the evidence that the objects of the association had altered very considerably since 1896, and they considered that they were entitled to examine the various objects to which the contributions were applied (*Adam Steamship Co., Ltd.* v. *Matheson* [1921] S.C. 141), and in so far as the objects were different and separable they ought to allow as a deduction that part of the contributions which was applied towards a proper trading expense. In view of *Lochgelly Iron & Coal Co., Ltd.* v. *Crawford* [1913] S.C. 810, they allowed that part of the contributions applied to the conciliation board and disallowed that part applied to the Mining Association of Great Britain.

FINLAY, J., held that the *Rhymney Case, supra*, was an authority which he ought to follow, and therefore it was not desirable that he should criticise it; expressing no opinion of his own, he held that the Commissioners were right in holding themselves bound by the *Rhymney Case*. Also it was not seriously disputed that *Lochgelly Iron & Coal Co., Ltd.* v. *Crawford, supra*, a decision of the Inner House of the Court of Session, ought to be followed. The Special Commissioners rightly held that they ought to follow it, and, following it, rightly allowed the contribution to the conciliation board and disallowed the contribution to the Mining Association of Great Britain. He was not satisfied that in analysing the payments the Commissioners made any error in law, and the appeal failed.

COUNSEL: *Needham*, K.C., and *J. S. Scrimgeour*, for the appellants; *the Attorney-General* (Sir Thomas Inskip, K.C.) and *R. P. Hills*, for the Crown.

SOLICITORS: *Savage, Cooper & Wright*, for *W. H. F. Barklam*, Cardiff; *the Solicitor of Inland Revenue.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Council of the Pharmaceutical Society of Great Britain *v.* Fuller.

Swift and Macnaghten, JJ. 25th May.

CHEMIST—REGISTERED—UNQUALIFIED ASSISTANT—IN SOLE CHARGE OF SHOP—BREACH OF STATUTORY PROVISION—POISONS AND PHARMACY ACT, 1908 (8 Edw. 7, c. 55), s. 3 (1).

This was an appeal by the plaintiffs, the Council of the Pharmaceutical Society of Great Britain, from a decision given by Judge Randolph at Aylesbury County Court.

The action was brought to recover a penalty of £5 from the defendant, Claude Edward Phillip Fuller, for an alleged breach of s. 3 (1) of the Poisons and Pharmacy Act, 1908. By that section any registered chemist shall be liable to a penalty unless in every premises where the business is carried on the business is *bonâ fide* conducted by himself or by some other duly registered chemist, and unless the name and certificate of qualification of the person by whom the business is so conducted is conspicuously exhibited in the premises. The county court judge found that during the relevant period the defendant had an engagement away from his place of business which occupied his time for forty-two hours in each week, and that during that period he left in charge of his shop an unqualified assistant, who sold to the public any goods that might be asked for; and that on three separate occasions that assistant had sold supplies of lysol to an inspector employed by the plaintiffs. The county court judge, however, relying on *The Council of the Pharmaceutical Society* v. *Watkinson* [1931] 2 K.B. 323; 75 SOL. J. 312, held that the facts of the present case did not constitute an infringement of the section, and he gave judgment for the defendant. The plaintiffs now appealed.

SWIFT, J., said that although *Watkinson's Case, supra*, was not binding on him, he was not prepared to differ from it. He thought that the present case was one suitable for appeal to the Court of Appeal, and the present appeal would be dismissed but leave to appeal would be granted.

MACNAGHTEN, J., agreed.

COUNSEL: *Sir Leslie Scott*, K.C., and *Glyn Jones*, for the appellants; the respondent did not appear and was not represented.

SOLICITORS: *Thompson, Quarrell & Co.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Maloney *v.* St. Helens Industrial Co-operative Society, Ltd.

Swift and Macnaghten, JJ. 8th June.

MASTER AND SERVANT—CONTRACT OF EMPLOYMENT—WAGES DURING SICKNESS—ACCIDENT—MEANING OF "SICKNESS."

Appeal from St. Helens County Court.

The appellant, Leo Maloney, who was employed by the respondents, St. Helens Industrial Co-operative Society, Ltd., as a grocer's assistant, claimed, under his contract of service with the defendants, £13 10s. for wages due to him during his sickness and incapacity for work between the 18th May and the 6th July, 1931, namely, three weeks at his full wages of £3 a week and three weeks at half wages of 30s. a week. The appellant was employed on an oral agreement, which admittedly incorporated the terms of an agreement as to wages made between the Co-operative Union, Ltd., on behalf of the employees, and the trade unions to which their workers, including the appellant, respectively belonged. Clause 15 of that agreement provided that: "Wages to be paid as below during periods of sickness where absence from duty is properly vouched for by medical evidence: a total of three weeks' full wages and three weeks' half wages in the aggregate in any one year." On the 18th May, 1931, by an accident arising out of and in the course of his employment, the appellant so injured his thumb that he was unable to work for six weeks. His absence from duty was properly vouched for by medical evidence. No claim was made for compensation under the Workmen's Compensation Act, but the plaintiff sought to recover sickness pay under cl. 15 of the wages agreement.

The county court judge held that cl. 15 had no relation to incapacity for work resulting from injury caused by accident arising out of and in the course of the plaintiff's

employment. He thought that "sickness" described a condition due to illness from disease or natural causes, but was not appropriate to the effects of accident, and he gave judgment for the defendants. The plaintiff now appealed.

MACNAGHTEN, J., said that it could not be disputed that the word "sickness" might properly be used to include a condition due to accident. He thought that "sickness" was used to describe any morbid condition without paying any attention to the cause of it. If the employee was in a condition when, by reason of the state of his health, he was incapable of attending to his duties, and if that was properly vouched for, then he was entitled to payment under cl. 15. The appeal would be allowed.

SWIFT, J., concurred.

Leave to appeal was granted.

COUNSEL: *Cave*, K.C., and *Gorman*, K.C. for the appellant; *Laski*, K.C., and *F. B. Turner*, for the respondents.

SOLICITORS: *Church, Adams, Tatham & Co.*, for *Cobbett, Wheeler & Cobbett*, Manchester; *Haslewood, Hare & Co.*, for *Aston, Harwood, Somers & San Garde*, Manchester.

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Probate, Divorce and Admiralty Division.

Williams *v.* Williams.

Lord Merrivale, P., and Langton, J. 24th May.

HUSBAND AND WIFE—MAINTENANCE ORDER ON THE GROUND OF DESERTION—NECESSITY OF CORROBORATION DISCUSSED—SUMMARY JURISDICTION (MARRIED WOMEN) ACT, 1895 (58 & 59 Vict. c. 39), s. 4.

This was the husband's appeal from a maintenance order made against him by the West London magistrate on the ground of desertion.

The marriage was in 1909. After a long separation in 1914 the parties finally separated in 1915. On the death of his father in December, 1931, the husband inherited approximately £6,000. Previously he had been a pedlar earning about £1 per week. In March, 1932, the wife took out a summons alleging that her husband had deserted her in January, 1915. The magistrate made a finding in her favour and ordered a payment of £2 per week. The husband now appealed on the grounds that the decision was against the weight of evidence, there being no corroboration, and that the amount ordered was excessive.

Lord MERRIVALE, P., in giving judgment, said that the strict law of corroboration by independent evidence required under the ecclesiastical practice in proceedings for desertion in the Divorce Court was not necessarily applicable to the summary jurisdiction. Nevertheless, in matters of greatest consequence between man and wife, to act on evidence unsupported by a body of facts would be dangerous. Where, however, one found that during seventeen years the husband had not lived with his wife and had not provided her with maintenance, there was a body of facts which, unless satisfactorily explained by the husband, established the wife's case. The magistrate took the right view, and the appeal would be dismissed with costs.

COUNSEL: *Willis*, K.C., and *Tyndale* for the appellant; *H. D. Grazebrook* for the respondent.

SOLICITORS: *Oswald Hanson & Smith; Pierron & Morley.*

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

In the Estate of Clara Clark, deceased.

Langton, J. 1st June.

PROBATE—PRACTICE—MOTION TO EXCLUDE WORDS FROM PROBATE—MISDESCRIPTION OF LEGATEES—NO COPY OF ORIGINAL PROBATE ISSUED.

This was a motion to exclude from probate words misdescribing legatees. No copy of the probate, other than the original, existed. Clara Clark, the deceased, died in January, 1932, leaving a will made in November, 1930. In February, 1932, probate was granted out of the Bristol Registry to the sole executor. The will as proved contained a residuary gift to the grandchildren of "my uncle" George Dennis Curnock. The deceased had a cousin of that name but not an uncle. Counsel now moved to exclude the words "my uncle" from the probate. The estate was very small and would thereby be saved the expense of proceedings for construction of the will. Notice of the motion had been given to the next-of-kin.

LANGTON, J., in acceding to the motion, said that the gentleman in question was spoken of as "uncle," and the mistake as to the relationship was never brought to the attention of the testatrix. It might be said she had no knowledge nor approval of the words of description. The words "my uncle" would be taken out of the probate as prayed.

COUNSEL: *H. D. Grazebrook*, for the applicant.

SOLICITORS: *Haslewood, Hare & Co.*, for *Geo. T. Cooke, Son & Painter*, Bristol.

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

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Societies.

The Law Society.

The Annual General Meeting of the members of this Society will be held at the Society's Hall (Chancery-lane entrance), on Friday, the 8th July, 1932, at 2 p.m.

The following are the provisions of Bye-law 15 as to the business to be transacted at an annual general meeting, namely :—

"The business of an Annual General Meeting shall be the election of President, Vice-President, and Members of Council, as directed by the Charter, and also the election of Auditors; the reception of the Accounts submitted by the Auditors for approval, the reception of the Annual Report of the Council, and the disposal of business introduced by the Council, and of any other matter which may consistently with the Charter and Bye-laws be introduced at such meeting."

The following candidates have been nominated to fill the thirteen (twelve referred to in the annual report and one which has been caused by the recent death of Sir Donald Maclean) vacancies in the Council, and in the offices of President, Vice-President, and Auditors :—

Qualified Members of the Society nominated as Members of the Council to be elected at the Annual General Meeting on the 8th July, 1932 :—

*George Dudley Colclough, B.A., LL.B.
William Charles Crocker.
†Francis John Fallowfield Curtis.
*†Hugh Matheson Foster, B.A.
*Douglas Thornbury Garrett, B.A.
*William Alan Gillett.
Henry Chicheley Haldane, B.A.
*Randle Fynes Wilson Holme, B.A.
Owen Johnston Humbert.
*†Arthur Murray Ingledew.
*†Philip Raynsford Longmore, M.A., O.B.E.
*Philip Hubert Martineau, B.A.
*William Egerton Mortimer, M.A.
*Walter Mantell Woodhouse.

Qualified Members proposed as President and Vice-President :—

As President—
Charles Edward Barry.
As Vice-President—
Sir Reginald Ward Edward Lane Poole, B.A.

Qualified Persons proposed as Auditors of the Society :—
John Stephens Chappelow, F.C.A.
Charles Robe Hills.
Edward William Forward.

Mr. Newson Littlewood Garrett, B.A. (Cantab.), will move :—

"That the Council be requested to take the earliest opportunity of introducing legislation with regard to the incidence of the costs of a lease so that instead of both lessor's and lessee's costs of a lease falling on the lessee in accordance with the present practice and custom, each party shall bear their own costs."

* Retiring Members of the Council. † Provincial Law Societies' nominees.

Sir Charles William Chitty, of Torquay, late a Judge of the High Court of Judicature, Calcutta, left estate of the gross value of £16,967, with net personalty £14,450.

Hardwicke Society.

In honour of his elevation to the bench, Mr. Justice du Parcq is to be entertained by the Hardwicke Society, of which he is an ex-President, at a dinner at the Waldorf Hotel on the 5th July. In conformity with the usual practice at such legal gatherings, this will be an informal function.

The Central Discharged Prisoners' Aid Society.

One of the main functions of the Central Society is to undertake cases of difficulty referred to it by any of the local D.P.A. Societies operating in England and Wales, and coming within that category, amongst others, are men of the commercial and professional classes which the Societies may not find it possible to negotiate within their own areas or refer to the Central Society for other reasons.

Perhaps it is not generally recognised to its fullest extent, except by those actively associated with the problem of helping persons released from prison, how stupendous the task of reinstatement is for those who have suffered imprisonment, even for the first time.

There are now fifty-four local D.P.A. Societies operating in England and Wales, and funds and legacies are urgently needed, as also are offers of employment. The address of the Central D.P.A. Society is Victory House, Leicester-square, W.C.2.

Parliamentary News.

Progress of Bills.

House of Lords.

Blackpool Improvement Bill.
Royal Assent. [16th June.
Bridgwater Corporation Bill.
Royal Assent. [16th June.
Bury Corporation Bill.
Read Third Time. [21st June.
Cambridge Corporation Bill.
Royal Assent. [16th June.
Chester Corporation Bill.
Reported, with Amendments. [15th June.
Church of Scotland Trust Order Confirmation Bill.
Royal Assent. [16th June.
Coal Mines Bill.
Royal Assent. [16th June.
Coatbridge Drainage Order Confirmation Bill.
Royal Assent. [16th June.
Commercial Gas Bill.
Read Third Time. [20th June.
Dagenham Trading Estate Bill.
Royal Assent. [16th June.
Epsom College Scheme Confirmation Bill.
Royal Assent. [16th June.
Finance Bill.
Royal Assent. [16th June.
Ford Street Charity Scheme Confirmation Bill.
Royal Assent. [16th June.
Gateshead Extension Bill.
Reported, with Amendments. [21st June.
Glasgow Corporation Order Confirmation Bill.
Royal Assent.]16th June.
Goldsmiths' Consolidated Charities Scheme Confirmation Bill.
Royal Assent. [16th June.
Grangemouth and Stirling Water Order Confirmation Bill.
Read Third Time. [22nd June.
Hire Purchase and Small Debts (Scotland) Bill.
Read First Time. [21st June.
Law of Property (Entailed Interests) Bill.
Royal Assent. [16th June.
Leven Burgh Extension Order Confirmation Bill.
Read First Time. [22nd June.
London and North Eastern Railway Order Confirmation Bill.
Read Third Time. [16th June.
London County Council (General Powers) Bill.
Read Third Time. [22nd June.
London County Council (Money) Bill.
Read Third Time. [22nd June.
London Midland and Scottish Railway Order Confirmation Bill.
Read Third Time. [16th June.
London United Tramways Limited (Trolley Vehicles) Provisional Order Bill.
Reported, without Amendment. [22nd June.

Maidstone Bread Charities Scheme Confirmation Bill.
Royal Assent. [16th June.
Malta Constitution Bill.
Read Second Time. [16th June.
Marriages Provisional Order (No. 2) Bill.
Read First Time. [20th June.
Mid Southern Utility Bill.
Reported, with Amendments. [21st June.
Ministry of Health Provisional Order Confirmation (Hailsham Water) Bill.
Read Third Time. [16th June.
Ministry of Health Provisional Order Confirmation (Henley-on-Thames Water) Bill.
Read Third Time. [16th June.
Ministry of Health Provisional Order Confirmation (Northampton) Bill.
Royal Assent. [16th June.
Ministry of Health Provisional Order (Leyton) Bill.
Reported, without Amendment. [22nd June.
Ministry of Health Provisional Order (Oxford) Bill.
Reported, without Amendment. [22nd June.
Ministry of Health Provisional Order (Paignton) Bill.
Reported, without Amendment. [22nd June.
Ministry of Health Provisional Order (River Dee) Bill.
Reported, without Amendment. [22nd June.
Ministry of Health Provisional Order (Watford) Bill.
Read First Time. [21st June.
Ministry of Health Provisional Orders (Abergavenny and Newcastle-upon-Tyne) Bill.
Reported, without Amendment. [22nd June.
Ministry of Health Provisional Orders (Bridlington and Wells) Bill.
Reported, without Amendment. [22nd June.
Ministry of Health Provisional Orders Confirmation (Derby and Stalybridge, Hyde, Mossley and Dukinfield Tramways and Electricity Board) Bill.
Royal Assent. [16th June.
Ministry of Health Provisional Orders (Confirmation (Elham Valley Water and Herts and Essex Water) Bill.
Read Third Time. [16th June.
Ministry of Health Provisional Orders Confirmation (Lindsey and Lincoln Joint Smallpox Hospital District and Wandle Valley Joint Sewerage District) Bill.
Royal Assent. [16th June.
National Health Insurance and Contributory Pensions Bill.
Read First Time. [22nd June.
Newcastle-on-Tyne Fire Brigade Provisional Order Bill.
Read First Time. [20th June.
North Eastern Electric Supply Bill.
Royal Assent. [16th June.
North Metropolitan Electric Power Supply Bill.
Commons Amendments agreed to. [20th June.
Nottingham Corporation Bill.
Reported, with Amendments. [21st June.
Oakham Gas and Electricity Bill.
Read Third Time. [16th June.
Port of London (Various Powers) Bill.
Royal Assent. [16th June.
Public Health (Cleansing of Shellfish) Bill.
Royal Assent. [16th June.
Rhyl Urban District Council Bill.
Royal Assent. [16th June.
Rights of Way Bill.
In Committee. [21st June.
Road Traffic Bill.
Amendments Reported. [21st June.
Royal Society for the Prevention of Cruelty to Animals Bill.
Royal Assent. [16th June.
St. Andrews Links Order Confirmation Bill.
Royal Assent. [16th June.
Scarborough Gas Bill.
Royal Assent. [16th June.
Sidmouth Water Bill.
Commons Amendments agreed to. [21st June.
Solicitors Bill.
Read Third Time. [16th June.
South Lancashire Transport Company (Trolley Vehicles) Provisional Order Bill.
Reported without Amendment. [22nd June.
South Staffordshire Waterworks Bill.
Royal Assent. [16th June.
Southern Railway Bill.
Reported, with Amendments. [21st June.
Thames Conservancy Bill.
Royal Assent. [16th June.
Town and Country Planning Bill.
Read Second Time. [20th June.
Trent Navigation Bill.
Reported, with Amendments. [21st June.
Universities (Scotland) Bill.
Royal Assent. [16th June.
Welwyn Garden City Urban District Council Bill.
Royal Assent. [16th June.

House of Commons.

Bills of Exchange Act (1882) Amendment Bill.
Read Third Time. [22nd June.
Gas Light and Coke Company Bill.
Reported, with Amendments. [16th June.
Grangemouth and Stirling Water Order Confirmation Bill.
Read First Time. [22nd June.
Hire Purchase and Small Debt (Scotland) Bill.
Read Third Time. [20th June.
Hove Pier Bill.
Reported, with Amendments. [16th June.
Kendal Corn Rent Bill.
Lords Amendments agreed to. [17th June.
Kettering Gas Bill.
Lords Amendments agreed to. [17th June.
London and North Eastern Railway Order Confirmation Bill.
Read Second Time. [20th June.
London Midland and Scottish Railway Order Confirmation Bill.
Read Third Time. [22nd June.
Marriages Provisional Order (No. 2) Bill.
Read Third Time. [17th June.
Ministry of Health Provisional Order Confirmation (Hailsham Water) Bill.
Read First Time. [16th June.
Ministry of Health Provisional Order Confirmation (Henley-on-Thames Water) Bill.
Read First Time. [16th June.
Ministry of Health Provisional Order (Watford) Bill.
Read Third Time. [20th June.
Ministry of Health Provisional Orders Confirmation (Elham Valley Water and Herts and Essex Water) Bill.
Read First Time. [16th June.
National Health Insurance and Contributory Pensions Bill.
Read Third Time. [21st June.
Newcastle-upon-Tyne Fire Brigade Provisional Order Bill.
Read Third Time. [17th June.
North Metropolitan Electric Power Supply Bill.
Read Third Time. [17th June.
Oakham Gas and Electricity Bill.
Lords Amendments agreed to. [20th June.
Patents and Designs Bill.
Reported, with Amendments. [16th June.
Royal Society for the Prevention of Cruelty to Animals Bill.
Read Third Time. [16th June.
Sidmouth Water Bill.
Read Third Time. [20th June.
South Metropolitan Gas Bill.
Read Second Time. [20th June.
Sunday Entertainments Bill.
Reported, with Amendments. [21st June.

Questions to Ministers.

BUILDING SOCIETIES (LOAN INTEREST).

Mr. MANDER asked the Prime Minister if he will take steps to ensure that building societies shall reduce the rate of interest payable on loan stock, with a view to reducing the cost of acquiring housing accommodation and increasing activity in the building industry.

Mr. BALDWIN: No, Sir. The matter is not one in which Government action could be justified.

Mr. MANDER: Does not the right hon. Gentleman think that an expression of opinion from him would probably be quite sufficient to do all that is required?

Mr. BALDWIN: If my opinion would be so valuable, I must, of course, exercise some reserve in giving it. [16th June.

PROSECUTIONS (COSTS).

Mr. HUTCHISON asked the Secretary of State for the Home Department if he will give the number of prosecutions of offenders within the last twelve months in which, on conviction, an order has been made by the judge for the payment of part of the costs of the prosecution which otherwise fall on the taxpayer; and whether there is any objection and, if so, of what nature to the extension of this practice to all cases in which defendants are well able to pay.

THE UNDER-SECRETARY OF STATE FOR THE HOME DEPARTMENT (Mr. Oliver Stanley): My right hon. Friend regrets that he has no statistics which would enable him to furnish

the information asked for in the first part of the question. As regards the second part of the question, these powers are already possessed by the courts, and it would be outside my right hon. Friend's province to express any opinion as to the circumstances in which they should exercise them.

[16th June.

Legal Notes and News.

Honours and Appointments.

Mr. CLEMENT MILTON BARBER, Assistant Recorder of Sheffield, has been appointed Assistant Recorder of Leeds, in succession to the late Mr. W. H. Gingell.

Mr. GEORGE A. BREWIS, a Managing Clerk in the firm of Messrs. Sharpe, Pritchard & Co., of London, has been appointed Assistant Solicitor to the County Borough of Wigan.

Mr. L. E. RUMSEY, the Deputy Clerk, has been appointed Clerk of the Leicestershire County Council.

Professional Announcements.

(2s. per line.)

J. HUMPHREY BLAKE, M.A. (Oxon), has acquired as from 1st July, 1932, the practice of Canning & Kyrke, at Chard, Somerset, which practice he will carry on under the name of "Canning & Kyrke," at the same office in Chard, apart from the practice of Sparks & Blake, of Crewkerne, of which firm he still remains a partner.

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BOROUGH OF WOLVERHAMPTON.

The next Quarter Sessions of the Peace for the Borough of Wolverhampton will be held at the Sessions Court, Town Hall, North-street, Wolverhampton, on Friday, the 8th July, 1932, at 10 o'clock in the forenoon.

NEW PROCEDURE RULES.

In answer to an applicant under the New Procedure Rules the other day, Mr. Justice Swift stated that the proper procedure to obtain judgment in default of appearance in a New Procedure action was by a two-days' notice of motion in the ordinary way, the proceedings continuing to be marked "New Procedure."

MONEYLENDERS' CLAIMS AND THE NEW RULES.

Where an action by a moneylender for money lent has been transferred to the New Procedure List, and is subsequently settled, the court, before entering judgment by consent, will require the parties to satisfy a Master that the interest charged is not excessive.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.	EMERGENCY ROTA.	APPEAL COURT No. 1.	MR. JUSTICE EVE.	MR. JUSTICE MAUGHAM.
	GROUP I.		Witness. Part I. GROUP II.	Non-Witness.
M'nd'y June 27	Mr. Ritchie	Mr. Hicks Beach	Mr.*Andrews	Mr. More
Tuesday .. 28	Blaker	Andrews	*More	Ritchie
Wednesday 29	More	Jones	*Ritchie	Andrews
Thursday . 30	Hicks Beach	Ritchie	*Andrews	More
Friday July 1	Andrews	Blaker	More	Ritchie
Saturday .. 2	Jones	More	Ritchie	Andrews
	MR. JUSTICE BENNETT.	MR. JUSTICE CLAUSON.	MR. JUSTICE LUXMOORE.	MR. JUSTICE FARWELL.
	Witness Part II.	Non-Witness.	Witness. Part II.	Witness Part I.
M'nd'y June 27	Mr.*Ritchie	Mr. Jones	Mr. Hicks Beach	Mr.*Blaker
Tuesday .. 28	Andrews	Hicks Beach	*Blaker	*Jones
Wednesday 29	*More	Blaker	Jones	*Hicks Beach
Thursday . 30	Ritchie	Jones	*Hicks Beach	Blaker
Friday July 1	*Andrews	Hicks Beach	Blaker	*Jones
Saturday .. 2	More	Blaker	Jones	Hicks Beach

*The Registrar will be in Chambers on these days, and also on the days when the Court is not sitting.

VALUATIONS FOR INSURANCE. It is very essential that all Policy Holders should have a detailed valuation of their effects. Property is frequently very inadequately insured, and in case of loss insurers suffer accordingly. **DEBENHAM STORR & SONS (LIMITED)**, 26, King Street, Covent Garden, W.C.2, the well-known chattel valuers and auctioneers (established over 100 years), have a staff of expert valuers and will be glad to advise those desiring valuations for any purpose. Jewels, plate, furs, furniture, works of art, bric-a-brac, a speciality. 'Phone: Temple Bar 1181-2.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (12th May, 1932) 2½%. Next London Stock Exchange Settlement Thursday, 7th July, 1932.

	Middle Price 22 June 1932.	Flat Interest Yield.	Approximate Yield with redemption
English Government Securities.		£ s. d.	£ s. d.
Consols 4% 1957 or after	101	3 19 2	—
Consols 2½%	65	3 16 11	—
War Loan 5% 1929-47	102	4 18 0	—
War Loan 4½% 1925-45	102	4 8 3	4 5 10
Funding 4% Loan 1960-90	102¾	3 17 10	3 17 7
Victory 4% Loan (Available for Estate Duty at par) Average life 31 years	102¾	3 17 10	3 17 2
Conversion 5% Loan 1944-64	109¾	4 11 1	4 8 6
Conversion 4½% Loan 1940-44	105	4 5 9	3 19 4
Conversion 3½% Loan 1961	90½	3 17 0	—
Local Loans 3% Stock 1912 or after	75½	3 19 6	—
Bank Stock	284	4 4 5	—
India 4½% 1950-55	93	4 16 9	—
India 3½%	69	5 1 5	—
India 3%	59	5 1 9	—
Sudan 4½% 1939-73	103	4 7 5	4 6 9
Sudan 4% 1974	100	4 0 0	4 0 0
Transvaal Government 3% 1923-53 (Guaranteed by British Government.)	95	3 3 1	3 6 10
Colonial Securities.			
Canada 3% 1938	92½	3 4 10	4 9 0
Cape of Good Hope 4% 1916-36	99	4 0 10	4 5 0
Cape of Good Hope 3½% 1929-49	85	4 2 4	4 16 6
Ceylon 5% 1960-70	108	4 12 7	4 11 1
Commonwealth of Australia 5% 1945-75	92½	5 8 1	5 9 0
Gold Coast 4½% 1956	101	4 9 1	4 8 6
Jamaica 4½% 1941-71	101	4 9 1	4 8 11
Natal 4% 1937	98	4 1 8	4 9 1
New South Wales 4½% 1935-45	78½	5 14 8	7 1 10
New South Wales 5% 1945-65	86½	5 15 7	5 18 8
New Zealand 4½% 1945	90	5 0 0	5 12 4
New Zealand 5% 1946	97	5 3 1	5 6 4
Nigeria 5% 1950-60	108	4 12 7	4 9 8
Queensland 5% 1940-60	86½	5 15 7	6 0 2
South Africa 5% 1945-75	101½	4 18 6	4 18 4
South Australia 5% 1945-75	91½	5 9 4	5 10 4
Tasmania 5% 1945-75	92½	5 8 1	5 9 0
Victoria 5% 1945-75	86½	5 15 7	5 17 4
West Australia 5% 1945-75	93½	5 7 0	5 7 9
Corporation Stocks.			
Birmingham 3% on or after 1947 or at option of Corporation	72	4 3 4	—
Birmingham 5% 1946-56	107	4 13 5	4 10 2
Cardiff 5% 1945-65	104	4 16 2	4 15 1
Croydon 3% 1940-60	80	3 15 0	4 5 0
Hastings 5% 1947-67	106	4 14 4	4 13 0
Hull 3½% 1925-55	84	4 3 4	4 13 0
Liverpool 3½% Redeemable by agreement with holders or by purchase	85	4 2 4	—
London County 2½% Consolidated Stock after 1920 at option of Corporation	62	4 0 8	—
London County 3% Consolidated Stock after 1920 at option of Corporation	74	4 1 1	—
Metropolitan Water Board 3% "A" 1963-2003	74½	4 0 7	—
Do. do. 3% "B" 1934-2003	77	3 18 0	—
Middlesex C.C. 3½% 1927-47	92	3 16 1	4 4 8
Newcastle 3½% Irredeemable	79xd	4 8 8	—
Nottingham 3% Irredeemable	71	4 4 6	—
Stockton 5% 1946-66	106	4 14 4	4 12 11
Wolverhampton 5% 1946-56	105	4 15 3	4 12 10
English Railway Prior Charges.			
Gt. Western Rly. 4% Debenture	87½	4 11 6	—
Gt. Western Rly. 5% Rent Charge	101½	4 18 6	—
Gt. Western Rly. 5% Preference	48	10 8 4	—
L. Mid. & Scot. Rly. 4% Debenture	76¼xd	5 4 7	—
L. Mid. & Scot. Rly. 4% Guaranteed	58	6 17 11	—
L. Mid. & Scot. Rly. 4% Preference	26½	15 1 10	—
Southern Rly. 4% Debenture	78½xd	5 1 11	—
Southern Rly. 5% Guaranteed	87½	5 14 3	—
Southern Rly. 5% Preference	37½	13 6 8	—
*L. & N.E. Rly. 4% Debenture	69¼xd	5 15 1	—
*L. & N.E. Rly. 4% 1st Guaranteed	46	8 13 10	—
*L. & N.E. Rly. 4% 1st Preference	20	20 0 0	—

*The Prior Charge Stocks of the L. & N.E. Rly. are no longer available for Trustees under the heading of either Strict Trustee or Chancery Stocks as no dividend has been paid on that Company's Ordinary Stocks for the past year.

MONEYLENDERS ACT, 1927

FORMS.

MONEYLENDERS' Licences will expire on the 31st July, and Forms 1 and 3 will be required in connection with their renewal. The forms marked * have been settled for the Society by the authors of the "Law Relating to Moneylenders." Forms 4, 5, 6, 7 and 8 are supplied in duplicate for the price shown. By the use of carbon paper, a copy of the document can thus be made for delivery to the Borrower as required by the Act.

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7. *Legal Charge of Property. (Duplicate form)	1	0
8. *Mortgage of Life Policy. (Duplicate form)	1	0
9. *Promissory Note by one person. (*Draft*)	0	6
10. *Promissory Note by more than one person jointly or severally. (*Draft*) ..	0	6
11. Application to the Board of Trade for the exemption from the Act of a body corporate.	0	2

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